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Government
Publications

Ontario. Leg. Assembly.
Standing Cttee. on Finance
& Economic Affairs

DEBATES

36th Parl., 2nd Session
1998

C120N
XC 25
-F31



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ISSN 1180-4386

**Legislative Assembly
of Ontario**

Second Session, 36th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 36^e législature

**Official Report
of Debates
(Hansard)**

Thursday 7 May 1998

**Journal
des débats
(Hansard)**

Jeudi 7 mai 1998

**Standing committee on
finance and economic affairs**

Organization

**Comité permanent des finances
et des affaires économiques**

Organisation



Chair: Garry J. Guzzo
Clerk: Tonia Grannum

Président : Garry J. Guzzo
Greffière : Tonia Grannum

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Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRSCOMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES

Thursday 7 May 1998

Jeudi 7 mai 1998

The committee met at 1104 in room 151.

ELECTION OF CHAIR

Clerk of the Committee (Ms Tonia Grannum): Honourable members, it's my duty to call upon you to elect a Chair. Can I receive nominations?

Mr Gerry Phillips (Scarborough-Agincourt): I move Mr Guzzo for Chair.

Mr Tony Silipo (Dovercourt): I'll second the nomination.

Mr E.J. Douglas Rollins (Quinte): I move nominations closed.

Clerk of the Committee: Nominations are closed. I declare Mr Guzzo duly elected as Chair of the committee. He may take the Chair.

The Chair (Mr Garry J. Guzzo): Members, thank you very much. I'll take the opportunity to commend you for your efforts in preparing the report that was tabled last week, particularly under the restraints that were imposed upon us.

ELECTION OF VICE-CHAIR

The Chair: I now call for names in the election of a Vice-Chair and receive any nominations.

Mr Mario Sergio (Yorkview): I nominate the member for Kitchener, Mr Wettlaufer.

The Chair: Moved that Mr Wettlaufer be elected as Vice-Chair. Any other nominations? Moved that nominations close?

Mr Rollins: So moved.

The Chair: I recognize Mr Wettlaufer, the member for Kitchener, as the Vice-Chair.

Anything else on the agenda?

APPOINTMENT OF SUBCOMMITTEE

Mr Rollins: I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee; that the presence of all members of the subcommittee is necessary to constitute a meeting; and that the subcommittee be composed of the following members: Mr Guzzo, Mr Baird, Mr Phillips and Mr Silipo; and that any member may designate a substitute member on the subcommittee who is of the same recognized party.

The Chair: Any discussion on Mr Rollins's motion? Ready for the question? All in favour? Contrary, if any? Carried.

Mr Sergio: I move adjournment.

The Chair: Move to adjourn? Carried. Thank you very much.

The committee adjourned at 1107.

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STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

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Mr Tony Silipo (Dovercourt ND)

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ISSN 1180-4386

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Official Report of Debates (Hansard)

Wednesday 3 June 1998

Journal des débats (Hansard)

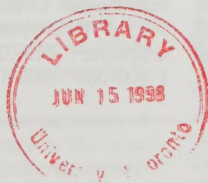
Mercredi 3 juin 1998

**Standing committee on
finance and economic affairs**

Small Business and Charities
Protection Act, 1998

**Comité permanent des finances
et des affaires économiques**

Loi de 1998 sur la protection
des petites entreprises et des
organismes de bienfaisance



Chair: Garry J. Guzzo
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STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRSCOMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES

Wednesday 3 June 1998

Mercredi 3 juin 1998

*The committee met at 0905 in room 151.*SMALL BUSINESS AND CHARITIES
PROTECTION ACT, 1998LOI DE 1998 SUR LA PROTECTION
DES PETITES ENTREPRISES
ET DES ORGANISMES
DE BIENFAISANCE

Consideration of Bill 16, An Act to give Tax Relief to Small Businesses, Charities and Others and to make other amendments respecting the Financing of Local Government and Schools / Projet de loi 16, Loi visant à alléger les impôts des petites entreprises, des organismes de bienfaisance et d'autres et à apporter d'autres modifications en ce qui a trait au financement des administrations locales et des écoles.

The Chair (Mr Garry J. Guzzo): The first item of business is the subcommittee report. May I have a motion, please, to accept the subcommittee report? Mr Phillips, seconded by Mr Rollins. Any discussion?

Mr Tony Silipo (Dovercourt): I just want to be clear whether the minister will be attending this morning.

The Chair: We have a letter dated June 2, 1998, from the minister's office indicating that he is tied up at a cabinet briefing this morning, but staff will make a presentation on his behalf.

Mr Silipo: So he won't be appearing.

The Chair: He will not be personally appearing.

Mr Silipo: I just want to put on the record not only my disappointment but that I find that completely unacceptable. In a situation like this, on a bill as important as this, with the way the government has chosen to deal with this by time-allocating this bill, by bringing it here in this way, it's completely unacceptable that the minister would not have the courtesy to come before the committee to defend the bill and explain the amendments he's going to make to this important piece of legislation.

Ministers are always busy, but one of the traditions of this place has been that they show courtesy to the committees of the Legislative Assembly when those committees are dealing with legislation, particularly a piece of legislation as important as this, particularly given, as I say, that the government has chosen, of its own volition, to first of all refuse for weeks and weeks to have committee hearings, and then has bowed to pressure and come down

to one day of committee work on this bill. Even in that situation the government refuses to send the minister here, or the minister refuses to come here and sit in front of the committee and explain to us why he's proceeding in this way, why he's not proceeding with some amendments, or perhaps he is proceeding with some amendments. We will find that out, I suppose, during the course of the day.

I find it completely unacceptable, an affront to the whole process, an affront to our role as a committee — not just from the opposition side but I would say to all committee members — that the minister would not, on a piece of legislation as important as this, deem it important enough to be here.

Mr Gerry Phillips (Scarborough-Agincourt): Just to comment on it as well, the government set this agenda, the government said that this was the day they wanted to meet to discuss this. It wasn't as if this was some imposed day. Surely the minister, and he was responsible for setting this meeting, would have known whether he was available. Let's recognize what we're dealing with. This has become a comedy.

We've got Bill 106; then we've got Bill 149, amending Bill 106; Bill 164, amending Bill 149; now Bill 16 amending those bills, and I'm told we have a series of amendments that the government's going to propose. The government wanted to deal with them in private at 8 o'clock this morning. From our caucus point of view, we didn't think that was appropriate. We thought the public should know what these amendments are and we should deal with them in public now. This is \$16 billion of tax revenue; this is huge. We fully expected that the minister could free himself up for half an hour to come and explain to the public what he's doing here.

This has become a comedy. The municipalities were waiting on Friday for the assessment rolls; the mayors were waiting for the assessment rolls. They already are six weeks late. It's costing the taxpayers at least \$40 million. We are costing the taxpayers over \$1 million a day by this delay because they can't get their bills out. It's literally \$1 million a day. If the members opposite don't understand that, we have a significant problem. For the life of me, I can't understand why he couldn't spend half an hour with the public to explain the bill, to explain what changes he's planning in the bill.

In a few moments, we're going to have nine groups — we only have time for nine — present and they're going to

want to know what amendments are planned for the bill and what changes.

The government was in charge of this timetable. We said, at least five weeks ago if not six weeks ago, "Let's get into committee hearings." The government planned no committee hearings, told us there would be no committee hearings, until they were forced last Wednesday to recognize that there are flaws in the bill. There are flaws in the bill that have to be fixed and we don't even have the minister here to explain that.

I find it unusual that on something this fundamental the minister couldn't — I guess he's around the building somewhere. He's going over some agenda for some meeting that's going to take place some time down in the future and won't come here to explain the bill to us.

The Chair: Let me clarify it for the record. I don't think you intended to suggest that the committee would start at 8 o'clock this morning behind closed doors.

Mr Phillips: No, I'm sorry. You can see by the letter, I think, that the minister's staff said they would like to brief us on the amendments at 8 o'clock. We felt it was more appropriate for the public to be briefed on the amendments at 9 o'clock.

The Chair: Thank you for clarifying that.

Mr John R. Baird (Nepean): With respect to the comments made by my colleagues, to Mr Silipo, with the greatest respect, to walk in here and look surprised when you were informed yesterday that regrettably the minister was unavailable this morning —

Mr Silipo: I wasn't surprised.

Mr Baird: With the greatest of respect, that was clearly the impression you tried to leave with this committee when you were told before the subcommittee —

Mr Silipo: No, I was checking to make sure —

Mr Baird: I listened to you.

The Chair: Order, please. Mr Silipo, you'll have an opportunity later.

Mr Baird: We waited for 10 minutes because you were late, sir.

Mr Silipo: That's fine. If you want to put on the record that I was late, I was late.

Mr Baird: With the greatest of respect, you were told that regrettably the minister was unable to be here, but you wanted to invite him in some sort of political grandstanding gesture, and I think it's important to put that on the record.

Interjections.

The Chair: Order, please. Mr Baird has the floor.

Mr Baird: That is a fact and I'm going to put that on the record. With respect to the other issues, as a matter of courtesy, as always been the case, we offered technical briefings to members of the committee. I believe a good number of members of the committee, and one of the opposition members, took advantage of that briefing, which is regularly accorded, so we would have more time to hear from the public. I would have preferred to have had three or four more presentations from the public.

With respect to money being lost to the taxpayers, there is no lost \$40 million here. That money is resting in the

hands of the taxpayers. It's not being wasted. It's being thrown down the line. The whole thought, to think that tax dollars staying in the hands of taxpayers is somehow lost money, that money, the interest costs are remaining in the taxpayers' pockets. Let's not leave any impression with the public that that money has somehow been dumped down the sewer somewhere, when it clearly hasn't. It's remaining in the pockets of taxpayers.

Interjections.

The Chair: Please, Mr Baird has the floor. We're dealing with the subcommittee report. I'm being very lenient.

Mr Baird: Each party has spoken. I think we should get on with the presentations so we can hear from the public.

The Chair: Any other comments with regard to the subcommittee report?

Mr Silipo: I am not going to go back at this issue Mr Baird has raised. I do want to make a point with respect to another piece in this report. I want to say that if the government were serious about actually hearing from people, they would have taken up our offer of some three to four weeks ago, which would have allowed ample time in this committee for this bill to be properly dealt with and still have been back in the House by the same time lines that this bill is going to back in the House, which is later this week or next week. Let's put that on the record as well.

Before we proceed with the presentation from the ministry, given that the minister isn't going to be with us, that in that ministry presentation — I've just glanced through the paper that's in front us — I don't see unless I've missed it, and I hope I've missed it, an outline of the amendments the government is going to be moving. I appreciate that the deadline for tabling amendments is not until 2 o'clock this afternoon, but as Mr Baird will know, and as you will recall from the subcommittee meeting, we indicated that we think it would be very useful, before we begin the limited hearings we have this morning, that we all understand what amendments the government is prepared to move.

Rather than the ministry staff spending their time giving us 20 pages of background, which I appreciate having, I would ask that we focus on the amendments that the government is prepared to make so we know what the starting point is, and then we can talk with people as they present.

We purposely tried, in the groups we invited to come here, to get as good a cross-section as we could given the limited time. To make the process as useful as possible, it would be very useful to know what amendments the government is prepared to make, to see whether that responds to some of the concerns we have raised, and more importantly, that the groups that are going to be appearing in front of us have raised. Then we could focus our attention on the issues that might be outstanding.

I seek some clarification on that from Mr Baird or whomever you think is appropriate to tell us. I would

make that as a request, that that be the focus of the presentation.

The Chair: If I might, I would tell you that I think it might be appropriate to hear from the public before we deal with the issue of the amendments. We have invited, on the subcommittee's instructions, the ministry to make a presentation. We allotted 45 minutes: 30 minutes for the presentation and 15 minutes for some comments by the committee after the presentation. We've selected nine groups for the express purpose of allowing 15 minutes per group. I intend, as a courtesy to those groups, to allow for that time. It's now 17 minutes after 9 by my timepiece, so I would tell you that I am not prepared to tell the ministry at this point what it is that we want to hear. We've given them written instructions as to what we wanted, that we wanted an overview presentation.

Mr Silipo: And a presentation of the amendments, Chair. That was part of the discussion we had at the subcommittee. I'm not injecting this as new information now. That was exactly what we requested.

The Chair: I have a copy of my letter to the ministry in front of me. Let me read it into the record:

"On Tuesday, 2 June 1998 the subcommittee of the standing committee on finance and economic affairs met and agreed that the committee invite the Minister of Finance and staff to appear on Wednesday, 3 June 1998 at 9 am to present a 30-minute briefing on Bill 16, the Small Business and Charities Protection Act, 1998.

"Your briefing would be followed by a 15-minute questions-and-comments period.

"The subcommittee is therefore requesting 45 minutes of your time.... It would be appreciated if —"

Mr Phillips: Chair, this may be helpful, perhaps. The reason we're here is that the government wants to make amendments to the bill. The presenters will be trying to figure out what the government plans to do with the bill. We are going to waste the time of the presenters if the government doesn't say, "Here are the changes we plan on the bill."

We were told yesterday that at 8 o'clock this morning the government was prepared to present its amendments to us in private. I don't like that. I think they should be presented at 9 o'clock in public. The government has its amendments in those binders back there. For the clerks and treasurers, for example, to make their presentation, they should know what the government is planning to do to amend the bill so they can gear their comments to that.

While it may not be in the minutes, certainly I agree with Mr Silipo that our discussion was that the main reason for the staff to be here was to explain what changes they plan in Bill 16, so that all these presenters can gear their comments to the bill as the government sees it amended. Otherwise it becomes a bit of a farce. The presenters will be trying to guess what the government has planned for the bill when you already know what you have planned for the bill. Surely, in being honest with these presenters, you should say, "Here are the amendments we've got." We know you've got them because you said you would present them to us at 8 o'clock this morning.

Why not spell them out so the people here from AMO and from the clerks and treasurers and from the city of Toronto and elsewhere can look at those at amendments and say, "We're pleased to see that you have accommodated our concerns," or "We still have these concerns."

This is really a very unfortunate process because we're going to hear from presenters up until noon and all amendments have to be in by 2 o'clock. It becomes a bit farcical to try and expect that amendments can be written from 12 until 2 o'clock and then given to the clerk and distributed.

In terms of trying to add some credibility to this process the government really should table its amendments immediately, and then the groups can understand where you're going with the bill.

0920

Mr Baird: With respect to the comment, certainly the government has some amendments that we intend to present. We offered, as a matter of courtesy, to give you a technical briefing on those amendments. The two critics declined that opportunity.

The consultation is not beginning at 9:45 this morning. The consultation has been ongoing. We had some very good meetings with the clerks and treasurers, with the city of Toronto, with AMO, with the board of trade over the last number of weeks and months, and some of the comments and concerns they've suggested will undoubtedly be a part of those amendments. But to suggest that they're somehow going to come here and gear their comments when we've already got a few of the presentations that were submitted yesterday to the committee in advance of today's presentation —

Mr Phillips: Just table the amendments.

Mr Baird: We can talk about this and go around this till the cows come home, but we want to get on with getting the presentations from the groups we've requested to come before the committee. The committee itself has said that we will table amendments at 2 o'clock. That's in the subcommittee report that you moved the adoption of, to table them at 2 o'clock.

We offered you, as a matter of courtesy, some technical briefings so you would know the direction we're going in. They will be presented in full in public hearings this afternoon on a more formal basis.

We will be hearing from nine groups this morning, and we'll obviously weigh those with the amendments we've had drafted, and maybe there will be some additions, some deletions or some minor clarifications to those amendments based on what we hear.

We have already met with a good number of the groups that are coming before us: AMO, the clerks and treasurers, the city of Toronto, the CFIB, the Specialty Tenant Tax Coalition, the Toronto Association of Business Improvement Areas, the board of trade — have heard concerns and representations from a whole host of groups. I think we're just talking around the issue and we should get on with it.

Mr John Gerretsen (Kingston and The Islands): I've heard a number of times now that the staff was

prepared to meet with individual members at 8 o'clock to discuss the amendments. That is not true. I had a meeting with the staff people at 8 o'clock. It was a very fruitful meeting, but they were not prepared to discuss the amendments or the technical aspects of the amendments with me. It is absolute nonsense to suggest that the staff was prepared to discuss the amendments with the members of the opposition. I had a meeting with two very fine people from the finance department, but they were not prepared to discuss the amendments with me.

Mr Baird: We offered a technical briefing on the amendments to both the official critics. Mr Gerretsen, I don't dispute what you've said with respect to your briefing this morning; it's factual. What I'm saying is that we offered briefings to the two critics and they said no. That's a fact.

Mr Gerretsen: Come on. Briefings were offered to our caucus. Mr Phillips and I are both members of our caucus, we are both members of the committee. He had other business to attend to at that time. I was there at the meeting at 8 o'clock and your staff was not prepared to discuss the amendments, and that's the way it is. I specifically asked them, "Could you tell me what amendments there are?" They said: "They will be presented later on today. We cannot discuss them" — period.

Mr Baird: Because your critics said they didn't want them presented, that's why.

The Chair: Mr Gerretsen, you've made your point, and I thank you very much. The matter before me is the motion by Mr Phillips with regard to the subcommittee report. I'd like to deal with it.

Mr Phillips: I'm going to move an amendment to that, that the amendments that the government says are available, says they were prepared to give to the critics privately at 8 o'clock, be now presented to the public, at 9:25.

The Chair: Do you understand the amendment? Mr Phillips is now moving the subcommittee report and amending it with the suggestion that any amendments, I assume —

Mr Phillips: What I said was the government amendments —

The Chair: That any government amendments available now be presented to the public at —

Mr Phillips: That's not what I said. I said that the government amendments that they were prepared to present privately at 8 o'clock this morning now be presented publicly at 9:25 to the committee.

Mr Ernie Hardeman (Oxford): On a point of order, Mr Chair: I don't purport to be an expert on that, but I would find it inappropriate that this committee would amend a report. If that was the direction the member wanted to take, he should move a motion for this committee to make that decision, not to amend a report that came from a committee that was here for approval or non-approval.

The Chair: It's a valid point. We're dealing with a subcommittee report. I suppose we either deal with the subcommittee report, and then if you'd like to make a separate —

Mr Phillips: Surely the reason for the report to come here is to either be adopted or amended. It surely was in order.

The Chair: I feel it's a matter to be dealt with, ab initio, by this committee. I'll deal with the subcommittee report and I'll entertain your motion if you'd like to make it at that time.

Any further comment on the subcommittee report? Are you ready for the question? All those in favour?

Mr Baird: Of the amendment?

The Chair: No, of the subcommittee report. All those in favour? Contrary, if any? Carried.

Mr Phillips: I would move that the government amendments that they wanted to present privately at 8 o'clock this morning now be presented publicly to this committee.

The Chair: Any comment? It has been moved by Mr Phillips that any government amendments that were to be presented at 8 am this morning now be presented to this committee.

Mr Silipo: Just briefly, I'm in support of that motion. I indicate to the government members that it would be in everyone's best interests, including the government members' best interests, that we know, going into this morning, what those amendments are. I would much rather have the ministry staff or Mr Baird, however you want to deal with it, take us through the amendments than spend the next 15 minutes going through a presentation by the ministry staff on the content of the bill, which I think we're generally all familiar enough with.

I think it would make the very limited time we have as a committee as useful as we could humanly make it by actually knowing what the government is prepared to do in the way of amendments, and then we can go from there. The rest of the morning and the afternoon will flow in a much more useful fashion if you do that than if you try to block us from knowing what those amendments are going to be, and particularly to try to block the people presenting from knowing what those amendments are going to be. They're written; you know what they are. Tell us what they are.

Mr Baird: We don't have a final — we had offered them to the two critics, if they wanted a briefing on where we intended to go. You said you didn't want it. Therefore, we proceeded —

Mr Phillips: I said I want a public —

The Chair: Just a minute, please, Mr Phillips.

Mr Baird: We proceeded on the basis of the subcommittee report —

Interjection.

The Chair: Excuse me. Mr Silipo, please. I've got to have some order here. Please continue.

Mr Baird: I call the question.

The Chair: Any further comment with regard to the motion by Mr Phillips?

Mr Gerretsen: I think he hasn't got the amendments yet.

The Chair: Are you ready for the question?

Mr Phillips: Recorded vote.

Ayes

Gerretsen, Phillips, Silipo.

Nays

Arnott, Baird, Gilchrist, Hardeman, Rollins.

The Chair: The motion is defeated.

0930

MINISTRY BRIEFING

The Chair: I now propose to deal with the presentation of the finance department staff. We are limited to 15 minutes. Please come forward and introduce yourselves, if you would.

Mr Tom Sweeting: Good morning. My name is Tom Sweeting. I'm assistant deputy minister, office of the budget and taxation, Ministry of Finance. On my left is Mr Gerald Sholtack, who's senior counsel in the legal branch at the Ministry of Finance. On my right is Ann Langleben, who's a director of the tax design and legislation branch in the Ministry of Finance.

The Chair: Welcome. I apologize that we are now in the position that you're limited to 15 minutes. I intend to hold you to that, because the public that has been responded to in an affirmative manner by the committee is going to be backed up and waiting otherwise. I apologize on behalf of the committee. Please proceed, sir.

Mr Sweeting: Given your instructions, there is a presentation that has been made available to committee members that we had planned to make today. We will shorten that presentation to meet the 15-minute time line.

I'd like to say in beginning that Bill 16 is a piece of legislation in a series of legislative changes aimed at introducing property tax reform in Ontario. This committee has already heard previously the reasons and rationale for changing property tax reform in Ontario, rooted in the inequitable and unfair system that had developed over the years, due primarily to outdated assessments in many parts of the province. Property tax reform grows out of the recommendations of the David Crombie Who Does What panel, who were asked by the government to examine a variety of issues of interest to local finance, including property tax reform, and made a number of recommendations on the property tax system.

As has been pointed out already this morning, there have been a number of bills. Bill 106, Bill 149, Bill 160, Bill 164 and currently Bill 16 are all part of the fabric of introducing property tax reform in Ontario. I'd like to remind the members briefly of the elements of those bills because it is a series of building changes aimed at implementing a comprehensive new assessment in property tax system.

Bill 106 required all properties across the province to be assessed at the current value to ensure consistent valuation. Assessments were done at values as of June 30, 1996, for the years 1998, 1999 and 2000; June 30, 1999,

for the years 2001 and 2002; and June 30, 2001, for 2003. In years after that, they will be done annually. Once they're done annually, the assessments will be based on three-year rolling averages.

Bill 106 created standard property tax classes for use by municipalities. It eliminated the business occupancy tax and it introduced a number of concepts to substantially increase local autonomy to make decisions to suit local needs, including the ability to set different tax rates for different classes of property within parameters set by the province to ensure that municipal decisions to make changes move in the direction of greater fairness. It also allowed for an optional phase-in of up to eight years. It required that there be a program at the municipal level regarding increases to low-income seniors and property owners.

Bill 149, which was the second step in reform, added some key provisions including graduated tax rates for commercial properties; rebates to charitable and similar organizations; classifications of properties into subclasses for farmlands pending development, vacant land, and vacant units and excess land. It made provisions that would allow transition ratios to operate effectively in areas undergoing annexation. It brought clarity to a number of property tax exemptions, many of which had been confusing and subject to considerable litigation, and it brought consistency and clarity to the assessment and to the treatment of utility and railway rights of way.

Bill 160 introduced the education portion of property tax reform. Under that bill, the province took control of education tax rates. It introduced a uniform tax rate for residential and multiresidential properties, and also the power to determine appropriate education tax rates for commercial and industrial properties. The purpose of education taxes would be that taxes raised in a municipality would stay in that municipality for school board purposes.

Bill 164, which is the Tax Credits to Create Jobs Act, was the mechanism by which the government introduced the foundation for returning the administration of assessment to municipalities. I might add also that in the 1998 budget, the government made a commitment to reduce business education property taxes over eight years, starting with a reduction of \$64 million in 1998. The reduction would be delivered to businesses and municipalities where they currently pay taxes that are above the provincial average for commercial and industrial.

Which brings us to Bill 16. In response to these previous bills and the implementation of reform, small business expressed concerns about the amount and pace of change that was expected to occur in some municipalities. The government developed a plan that provides additional protection against those large effects resulting from reassessment, while continuing to move towards a fairer structure. In doing so, the minister reiterated that the Ontario fair assessment system is the best way to ensure a fair property tax system, especially once the system is based on annual updates with a three-year rolling average. The proposals in Bill 16 provide municipalities with more

options to move forward in manageable steps towards a fairer, consistent and sustainable property tax system.

The bill protects small businesses and charities by addressing several issues including the possibility of large tax increases for small businesses at low effective tax rates, which typically occur in very outdated assessment bases; the issue of the tax burden on charities required to pay higher taxes due to the elimination of business occupancy tax; the corresponding increases in commercial taxes; and the inability of landlords to recover business occupancy tax and BIA charges under existing gross leases.

My colleague Ann Langleben will now briefly discuss the key features of the bill that has been designed to deliver on this government's policy intentions.

Ms Ann Langleben: I'm not sure how much time I have, but I'll try to go through this as quickly as possible. One of the first key features is an enhanced rebate for charities. Municipalities are required to rebate at least 40% of property taxes paid by charities occupying business properties.

There's a cap on property tax increases for commercial, industrial and multiresidential classes. The cap is at 2.5% of 1997 taxes.

There are additional optional commercial classes that municipalities can choose to use: office building, shopping centre, parking lot, vacant land and large industrial.

There's the extension of tiering to industrial properties, and this is in addition to commercial properties.

There's a municipal rebate option to further protect small business.

There's an expansion of the phase-in to allow all property tax changes related to property tax and assessment reform and not just assessment-related changes. This will capture tiering, for example, allowing landlords with gross leases to pass on a part of their realty taxes and business improvement area charges to their tenants.

The rebate to charities: Municipalities are required to rebate at least 40% of property taxes paid by those registered charities occupying commercial or industrial property. It changes the current charitable rebate provisions from permissive to mandatory. Eligible charities are those that are registered under the Income Tax Act. For municipalities that apply the 2.5% cap, the charity rebate becomes optional, since charities would be protected by the cap. The rebate must be at least 40% of the property taxes paid by a charity.

Municipalities have the flexibility to rebate up to 100% of the total tax paid by a charity and expand the rebate program to include other similar organizations. The cost of the rebates will be shared by municipalities and school boards. In an upper-tier municipality, the lower-tier municipality would also share the cost.

Moving to the 2.5% cap on property tax increases, section 30 of the bill adds part XXII.1, which allows municipalities to limit tax increases on occupants of business properties to 2.5% per year for three years. Business properties include commercial, industrial and multiresidential properties. If municipalities choose to cap tax

increases on any of the three general classes, that is, commercial, industrial or multiresidential, they must also cap increases on any of the new optional business classes that are derived from those broader classes.

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Tax decreases will be phased in to finance the limit to the tax increase, and the amount of taxes paid will also be affected by a general decrease in the municipal tax rate.

The decision to cap must be made in 1998. The cap is not exclusive. Municipalities can choose to use the other broad range of measures that are offered before applying that cap. The limit will be applied to individual tenants who were in occupation prior to 1998 so that the 1997 property taxes of each tenant of a business property can't increase by more than 2.5% per year. For multiresidential properties, the cap would be applied on a property basis and the landlord would be subject to the Tenant Protection Act to ensure that tenants are protected.

Municipalities would maintain a frozen assessment listing which would be based on 1997 assessments. They would include the total assessments; the commercial assessment, including industrial; the business assessment; the vacant commercial assessment; and the non-business assessment.

If a municipality chooses to cap, taxes may increase by more than 2.5% a year, but only in the following circumstances:

(1) There's a physical change in the property. In other words, there's new construction or additions or renovations, or property is added to the assessment role.

(2) There's some change in the vacancy; either vacant property becomes occupied or occupied property becomes vacant.

(3) The property is a mixed-use property and a portion of the property is in a class where the cap doesn't apply.

There are special rules for additions and renovations, new developments and changes in use. For new and changed properties, there is a need to create a proxy for determining 1997 taxes. Similarly, there are special calculation rules for vacancies so that where vacancies increase, there's a reduction to 1997 commercial and business assessment by the percentage change in the vacancies; where vacancies decrease, there would be an increase in the 1997 commercial assessment by the percentage change in vacancies.

A decision to limit taxes cannot be delegated by upper-tier municipalities to lower-tier municipalities. Municipalities would continue to have the option to provide rebates to charities in capped classes, but municipalities cannot provide municipal rebates in capped classes.

Mr Sweeting: At this point I would ask if there's time remaining to discuss these. We can simply highlight very quickly the last couple of pages.

The Chair: You have about two minutes, sir.

Ms Langleben: Let me just continue. The province would make four new property classes available to municipalities. Municipalities may choose to use any, all or none of the classes. Those classes are listed on page 17. They are the office building class, the shopping centre

class, parking lots and vacant land, and large industrial. Decisions regarding these new optional classes would be made by the upper-tier or single-tier municipalities. As I think I mentioned earlier, the new optional classes would be created from the existing commercial or industrial class. The minister would be provided with authority to establish subclasses for these new property classes.

On the next page we discuss industrial tiering. The power to tier would be extended to industrial properties. As I'm sure you're aware, the current provisions allow tiering for the commercial class only. The bill would allow municipalities to establish up to three bands of assessment tiers in the industrial class and to set different tax rates for each band. This tiering mechanism would also allow municipalities to apply lower tax rates to lower-valued industrial properties.

The Chair: Thank you very much for your presentation. The time that we have allotted has expired, and I apologize again.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Chair: We will now move to the public presentations. The first presentation will be from AMO, the Association of Municipalities of Ontario: Mayor Laking from the city of Barrie, and Casey Brendon, a policy adviser at AMO. Your Worship, thank you very much for coming. Welcome. You have 15 minutes. If you wish to save time for questions, feel free to do so.

Ms Janice Laking: Things are going to get more exciting, so listen up, wake up, guys. If you want to charge your coffee cup, I'll let you have coffee time out of my 15 minutes. I want you to be relaxed.

I'm Janice Laking, the mayor of the city of Barrie, a single-tier municipality, the very best kind in the world, and vice-president of AMO, the organization you should listen to very closely. With me today is Casey Brendon, the AMO policy adviser. Speaking notes are an abridged version of notes that you have, so you don't need to watch them; you can just file them and think about them. Put them under your pillow tonight and hope that osmosis works.

AMO has already identified some of the key issues with Bill 16, the Small Business and Charities Protection Act, and has communicated these to the Minister of Finance. I'm pleased, however, to be able to present AMO's concerns for consideration by this committee.

Bill 16 incorporates a number of new initiatives related to assessment and taxation and many technical amendments that are viewed as necessary to allow Ontario's new fair assessment system to be implemented. In particular, the bill contains measures to allow municipalities to protect small businesses and charities from large tax increases through the use of rebates, caps on tax increases and graduated tax rates for commercial and industrial property.

Many of the provisions of the bill directly affect the ability of municipalities to establish tax rates and tax

policies once final assessment values and transition ratios are released. As such, the need to pass this bill as quickly as possible must be recognized so that municipalities can get on with the business of establishing tax policy and collecting taxes. Without property tax revenue, municipalities will face difficulties financing their operations and capital programs, so we'll be down for some more from you guys.

On May 28, AMO learned that the delivery of the final assessment roll was to be further delayed by up to two weeks, pending legislative approval of this bill. Needless to say, the impact of this delay on municipalities is enormous. Without final assessment totals, transition ratios and tax rates can't be established. Without tax rates, final tax billings can't proceed. Without tax revenues, the municipalities will find it extremely difficult to remit amounts owing to school boards and other levels of governments, such as upper tiers — I don't have one of those — by the stated due dates for these payments. As a result of cash flow disruptions, municipalities may be faced with borrowing funds, either from internal reserves or externally, just to meet mandated payment schedules. This in turn increases our operating costs.

Interest earned on collected taxes is an important source of revenue for us. Delays in collection translate directly into lost revenues. This decreases money available to offset general tax increases and makes provincially imposed savings targets harder to reach. In the city of London, for example, costs of this delay have been calculated to be \$390,000 per month.

Many municipalities have not yet established final operating budgets for the year. They have no means of knowing what discretionary programs they will be able to fund because the costs of education funding have not been released. Similarly, capital programs in many municipalities have been put on hold pending finalization of budgets. This translates into lost opportunities, loss of potential employment opportunities and increases in the overall cost of capital programs.

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The timing of the return of the assessment roll becomes critical, as many of the dates for municipal decisions are tied to dates established by regulation. In some cases, these dates have already been determined by regulation but are based on a roll return date of May 30. Further delays reduce the time available for us to analyse their assessment data and formulate policy. This is particularly crucial in this transition year where decisions made may affect taxation systems for up to eight years hence. This is not the time to make rush or less than fully informed decisions.

We recognize the enormity of the task of reassessment and we acknowledge that the government has devoted resources to this initiative. However, timing is still a major concern for us. We can't be more resolute in our request that the necessary amendments to assessment and taxation legislation be expedited; further, that the associated regulatory framework is developed with municipal input and consultation and released as quickly

as possible, together with final assessment values and transition ratios that will allow municipalities to proceed.

The intent of Bill 16 should be to provide discretionary tools to mitigate large tax increases arising from the province-wide reassessment. Unfortunately, in some cases the legislation goes beyond this, involving the provincial government in local taxation matters. The role of the province is to find a broad taxation framework, not to mandate local property tax policies.

AMO has outlined below some of the key issues arising from Bill 16.

First, municipalities have several concerns related to the 2.5% cap. In AMO's view, the capping provision must only tie the cap to assessment-related tax increases in the same manner as provisions governing amounts which may be phased in. Linking the cap to operational budgets and/or general levy increases, combined with a three-year period to which a cap must apply, severely limits future taxation options of municipalities with respect to capped tax classes. This results in a situation where any tax increases must be borne by the remaining uncapped tax classes.

The concerns of municipalities arise from the fact that where caps are introduced in some municipalities, neighbouring municipalities will come under significant pressure from owners of similar properties and/or ratepayer groups to have their taxes similarly capped, particularly where the cap also applies to general levy increases. This presents a problem where municipalities may not wish to implement caps on tax increases, preferring instead to mitigate tax increases via phase-ins or rebate programs.

The use of a tax cap requires that municipalities maintain a frozen assessment listing such that all properties eligible for the cap would have their assessment linked with the 1997 assessment and tax level. This continues the reliance on outdated and unrepresentative assessment values, complicates tax calculations and ultimately prevents the move to province-wide consistency in assessment and taxation. Further, responsibility for maintenance of the 1997 assessment information must be clearly defined as to whether this function rests with the municipality or with the OPAC as the successor to the Ministry of Finance property assessment division.

Second, Bill 16 makes mandatory a rebate of 40% of total property tax for eligible charities. AMO maintains its objection to mandatory tax policy initiatives, believing that these are unwarranted and threaten local autonomy and responsiveness to constituent needs. Proposed legislative provisions do, however, provide municipalities with the option to establish a bylaw to extend this rebate to other similar organizations.

Municipalities are concerned with the requirement that rebates for eligible charities for 1998 and the first instalment of 1999 are required to be paid by October 31. While it's understood that this provision was to ensure that charitable organizations would not encounter cash flow problems, this requirement places an unfair obligation on municipalities to pay rebates in advance of the

actual due dates of taxes. A more appropriate provision would be one which allows rebate payments to be issued to eligible charities when actual tax payments are due. In addition, where an eligible charity is not required to pay taxes or is not affected by tax increases, it should not be mandatory that a rebate be provided to such organizations.

AMO recommends that some discretionary power or review authority on the part of the municipalities for the issuance and timing of rebate payments should be established within this legislation. This may be included in the definition of program requirements under subsection 442.1(3).

Third, AMO is pleased that legislative provisions governing similar organizations are flexible and permissive, recognizing the great diversity of charitable and non-profit associations province-wide. Municipalities are capable of identifying and classifying similar organizations such that bona fide and non-profit organizations that were not previously subject to BOT may continue to carry on operations without facing large tax increases. It's anticipated that the province will come under considerable pressure from lobby groups and non-profit associations to develop a definition for "similar" organizations. This must be resisted.

Bill 16 also provides the power for municipalities to prescribe by bylaw other rebates of property taxes to identified groups. These provisions are intended to allow municipalities to afford further protection against tax increases to small businesses or other commercial or industrial property types to address local circumstances.

The authority and discretion granted municipalities to provide rebates which recognize local circumstances is supported. Municipalities, for their part, recognize the value and role played by small business and their contribution towards local economies. The proposed legislative provisions of this section reinforce municipal autonomy and flexibility. We support provisions which provide for the sharing in the cost of rebates for the education portion of taxes on eligible properties by the province.

Fourth, the legislative authority for landlords to pass on BOT and business improvement area charges to tenants in gross lease situations is seen as necessary. We commend the government for incorporating AMO's previous recommendations in this area.

The legislative provisions are still unclear, however, as to the method of apportionment of both BOT and BIA amounts. It should be clearly established within the proposed legislation that the onus to apportion and collect these amounts lies with the property owner or landlord. While AMO supports the intent of this section, municipalities on the whole are concerned that such a legislative provision may be open to legal challenge. Assurance on the part of the government that these provisions have been thoroughly reviewed and are supported by legal principle would provide a measure of security and establish the intent of the government to stand behind potential legal challenges arising from these legislative provisions.

Finally, AMO is pleased that Bill 16 includes provisions for the payment to school boards of the education portion. These measures will provide significant relief for municipalities from cash flow shortages and increased financing costs because of the delay in the return of the roll.

Municipalities are seeking the following assurances with respect to interim financing:

(1) That all payments to school boards made on behalf of municipalities by the province are interest-free and that municipalities only be required to reimburse the province for actual amounts paid to school boards. We believe this is accomplished by the proposed legislation in subsection 34(14), but we would appreciate assurance.

(2) That municipalities not be required to demonstrate financial need. The delay in the return of the assessment roll and the inherent lost interest revenues should be sufficient to establish the need. This would also alleviate the administrative effort required to establish need.

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Many of the legislative provisions governing assessment and taxation are tied to regulations which establish the timing of municipal decisions, payment schedules and deadlines. This includes dates by which capping may be elected, dates by which tax rates must be established and payment to upper tiers, schools boards and charities.

The importance of well-informed and unhurried decision-making cannot be overstressed. Neither can the requirement for thorough review and analysis of final assessed values by municipal governments.

The Chair: Your Worship, I'm going to have to interrupt you there. You have about 30 seconds.

Ms Laking: Good. You probably can read the rest and you can ask me a quick question.

The Chair: I'm afraid we do not have time for questions. I thank you for your attendance and thank you for your presentation. We'll take your advice and put it under the pillow tonight.

Ms Laking: Sorry I didn't précis it a little more. Pleased to be here. Thank you for your attention. Remember, single tiers are great.

Mr Gerretsen: On a point of order, Mr Chair: In light of the discussion we had earlier, I've just been informed that the minister in question arrived at the west door of this building at 9:52. Perhaps we could ask him at 12 o'clock, after the presenters are through, to make the presentation that members of the committee may want to hear from him. I'm talking about the finance minister, of course.

The Chair: Thank you very much. I'll allow you to make the inquiry yourself, and if he's available, let the committee know.

Mr Baird: Mr Chair, if I could interject: The ministry office is not in this building and he's chairing cabinet this morning.

Mr Gerretsen: He arrived at the west door at 9:52, so I am informed.

Mr Baird: His ministry office isn't in the building.

The Chair: I hope you aren't keeping track of the rest of us in that manner, especially after 5 o'clock. This isn't Kingston, Mr Gerretsen.

Mr Gerretsen: It sure isn't. I would like to go on record as totally agreeing with you on that.

The Chair: Thank you very much.

BOARD OF TRADE OF METROPOLITAN TORONTO

The Chair: The next presentation is from the Toronto board of trade. Ms Verity, come forward. Welcome. Thank you for attending, and if you would, introduce the individuals with you.

Ms Louise Verity: Good morning. My name is Louise Verity, director of policy with the Toronto board of trade. With me is Bob Sniderman, a member of our board of directors and president of the Senator Restaurant; and John Bech-Hansen, staff economist.

We appreciate the opportunity to appear before the committee and apologize that our remarks were hatched together quite quickly last evening in response to the committee hearings recently being set.

The Toronto board of trade is representative of all sizes and types of businesses and, with over 10,000 members, is Canada's largest local chamber of commerce or board of trade.

Property tax reform has long been a top policy priority of the board. The Toronto business community has always paid a disproportionate share of the city's costs. Businesses contribute 55% of the total tax bill from an assessment base accounting for only 20% of the city's total property wealth.

We have consistently supported the province's efforts to introduce a modernized property assessment system in Ontario. Not one significant study of property taxation has recommended anything other than a value-based system for business property.

This is the first Ontario government since 1970, when the province assumed responsibility for property assessment, with the courage to act decisively in this critical area.

Over the past year, the board has made a number of submissions geared to ensuring that the transition to the new system is fair and manageable.

The passage of the capping component of Bill 16 is critical to Toronto's business community. We are also pleased — and this is a point we cannot overemphasize — that the capping option applies to both assessment-related tax changes in the commercial, industrial and multi-residential property classes and to budget-related tax changes.

Bob will now provide a small business perspective on the proposed legislation.

Mr Bob Sniderman: Thank you, Louise. Good morning.

As full or part owner of several small commercial properties and the Senator Restaurant in Toronto, I can assure you that the tax capping provisions in Bill 16 are

absolutely essential to protecting over 17,000 Toronto business properties like mine from triple-digit tax increases under CVA.

The board advocated for a cap on tax increases following the release of preliminary tax rates in March by the city suggesting that some individual business property taxpayers would face five-fold, 10-fold and even higher increases as a result of the new assessment system.

We think it is highly appropriate that the capping provisions will apply to both assessment-related tax changes and to budget-related tax changes. This will prevent Toronto's continent-topping business property tax rates from increasing further over the next three years. This is essential to ensuring economic development and job creation in the city.

It also provides an important mechanism to address the historical imbalance between residential and business tax rates in Toronto in a fair and incremental way. That is because under the provisions of the cap, if the city requires any budgetary increase over the next three years, it will have to raise it only from property classes not subject to capping.

Some Toronto councillors are worried that this means taxes will be shifted from business to residential taxpayers. It is important to point out that no such shift will occur if there is no budgetary increase. We think this will instil a cost-conscious approach to providing services and give council a powerful incentive to keep city costs in check and the mayor a strong incentive to fulfil his zero-tax-increase campaign promises.

However, if the capping provisions are removed or substantially amended, councils will have to consider other, much more complex options in the proposed legislation and associated proposed regulations to mitigate the impact of assessment reform.

I will now turn it back to Louise.

Ms Verity: The proposed legislation and regulations provide for as many as four new non-residential property classes to be created, with corresponding transition ratios and sub-classes for vacant land, and the optional extension of graduated tax rates to both existing non-residential property classes. A tax rebate option is also offered in the proposed legislation.

We see numerous problems ahead should municipal governments adopt this approach.

(1) It would make the property tax system incredibly complicated and all but incomprehensible to the average business taxpayer.

(2) It would make property assessments virtually irrelevant as a determinant of municipal taxes, leaving taxes subject to the arbitrary value judgements of municipal councillors.

(3) It risks exchanging one set of unacceptable impacts with another, just as Toronto found when it modelled the impact of graduated tax rates.

(4) A constituency and political lobby is certain to emerge around each of the new property classes where none existed before.

(5) It doesn't provide for a class of property to where there is strongest justification: the small, street-related commercial buildings commonly associated with small business uses.

In reference to this last point, we specifically recommend the minister prescribe only one additional property class in the regulations. This would consist entirely of small street-related commercial property types typically used by small, mostly retail, businesses. This would ensure that these taxpayers continue to receive a substantial measure of protection in Toronto when the three-year cap is lifted.

This would ensure the continuing viability of many small Toronto businesses and recognize the important contribution strip retail areas make to neighbourhood viability, street vitality and overall quality of life in the city.

We recommend that the draft regulatory provisions for the creation of optional classes for office buildings, shopping centres, vacant land, parking lots and large industrial properties, and the legislative provisions for graduated tax rates, not be implemented.

We would also like to take this opportunity to commend the province for committing in the 1998 budget to bringing education property tax rates down in Toronto, and other municipalities to the province-wide average over the next eight years. This is an issue the Toronto board has advocated long and hard for, and we were delighted with the announcement in the provincial budget. A reduction of C and I education taxes of between 25% and 50% by the year 2005 will take much of the sting out of assessment reform for Toronto's business community.

In closing, we would again like to emphasize the importance of applying the cap to both assessment-related tax changes in the commercial, industrial and multi-residential property classes and to budget changes. You may hear some different information later on this morning.

We offer our continued assistance and expertise to both the province and city as we move forward.

Thank you. We would be pleased to take any questions.

The Chair: Thank you very much. We have about two minutes per caucus. I'll start with the Liberals.

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Mr Phillips: Thank you. Just to get your interpretation of the bill, and I'll go quickly because we have little time: On the cap, if the municipality implements it, the way I read it is that a municipality then would be allowed to raise the same amount of money off a business class as it did in 1997. So if it's \$100 million, they still raise \$100 million.

If some businesses pay 2.5% more than they did in 1997, an equal amount of money has to be deducted from other businesses. So the 2.5% cap is really a freeze on the amount of money raised off that property class and the movements within it can be 2.5% above, but an equal amount of money has to be cut from below. Have I interpreted it properly?

Mr John Bech-Hansen: That's pretty much our understanding of how it's intended to work, yes.

Mr Silipo: On this question of your position that the 2.5% cap that's being suggested now is the way it should be done, if you support the notion that there should be a limit to property tax increases, why not then provide the same kind of capping or protection of 2.5% on the residential side that you obviously would like to see on the business side?

Ms Verity: First of all, the business taxpayer right now is responsible for roughly 55% of the tax contribution despite being accountable for only 20% of the total property tax value. There is an incredible historical imbalance there which would not serve to be eliminated over time should this approach be taken on the residential side.

Mr Silipo: But isn't that imbalance in part going to be taken out over the time period that the education issue is going to be addressed? Wouldn't that be the better way to deal with that issue, because that has been the cause of it, as opposed to creating a situation in which municipal councils are going to now have to pit business on the one hand against residences on the other side?

Mr Bech-Hansen: Can I just supplement? There are some things here from the city's own calculations in Toronto, at least, of the impact of the change. In a Toronto context anyway, only 3% of Toronto homeowners face tax increases of 100% or more, but 57% of Toronto businesses face a tax increase of 100% or more, 17,000 properties.

When you look at what's clustered around the median, it's a nice even bell curve of tax increases and decreases facing the residential taxpayer. Fifty-seven per cent of Toronto homeowners are clustered around an average tax increase of plus or minus 15%, so you only have 13% of Toronto businesses facing tax increases of plus or minus 15%.

You have so many businesses facing colossal tax increases. There is not even the most elemental shape of a bell curve in the distribution of increases and decreases as there is in the residential property costs, so it's for those two reasons.

The Chair: I'm going to interrupt you there. Thank you. To the government.

Mr Steve Gilchrist (Scarborough East): Thank you for coming before us here this morning. I appreciate Mr Phillips's getting on the record that under all these changes there will be an equal number of winners and losers, at least in terms of the dollar value.

I'd like to explore further as well the idea of the cap applying to both, because we just heard, as you did, from AMO the suggestion that this is somehow an unfair burden on the city. I think, Mr Hansen, you were in the middle of a point, or expanding on the point, of why you see that there is already an inequity that has to be addressed.

I wonder if you'd also add your comments — or whether you're inclined to make any comments — whether or not that's precisely what municipalities should be doing, trying to level out the tax rates as they apply to all properties, or at least come up with a far better estimation of true demand.

Mr Bech-Hansen: Absolutely. For one thing, having the option of capping is not hamstringing the ability of municipal governments to raise revenue. I think what might be lost in some of the perspective you hear from municipal governments is that they're implying that this is an extremely severe constraint on their ability to do business.

I think what has to be remembered always is that this is a freeze. It's the same amount of money being raised over the next three years, if the cap is adopted, from the cap's classes. How onerous can that be in the context of — you could take the example of the provincial government cutting income taxes by 30%, a very considerable change in potential revenue yields coming out of that. This is a freeze, and you still have several uncapped property classes where incremental revenue requirements can still be raised.

Mr Gilchrist: Would you hazard a guess as to how much the revenues will increase, based on growth?

The Chair: Mr Gilchrist, excuse me, we don't have time for a further question. I thank you.

Mr Gilchrist: I thought I had two minutes.

The Chair: When you take a minute and a half to ask the question, Mr Gilchrist, that sometimes limits the time for the answer. Do you understand?

Ms Verity, I thank you very much for your attendance and for your submission. We appreciate your time this morning.

CITIZENS FOR LOCAL DEMOCRACY

The Chair: The next presenter is Citizens for Local Democracy, Mr Sewell. Welcome, sir. You have 15 minutes to use as you see fit. Please proceed.

Mr John Sewell: Thank you very much, Mr Chairman.

Citizens for Local Democracy was formed in opposition to the imposition of Bill 103 and the megacity on Toronto municipalities. C4LD has continued to meet regularly to discuss the constant attacks on democracy and local institutions unleashed by the Harris government. More than 40 C4LD members wrote to the clerk asking to make presentations on the bill — I'm not sure if people are aware of that, but I have 40 of the letters I have received and I know others have received others — but by adoption of the time allocation motion they have been prevented from speaking, which is very unfortunate.

This brief will address three issues: the unfairness of the principles behind this particular bill; the undemocratic manner in which this bill has been processed and in which this government is acting; and the fact that this unworkable bill is being rushed through the legislative process with the intention of destroying local finances.

First, the flawed principles behind Bill 16: Section 30 of this bill apparently permits municipalities to freeze property tax increases for commercial, industrial and multi-residential properties across the province at 2.5% a year for the next three years. This is the "protection" the title of the bill refers to. If a municipality does not freeze these taxes, then it must implement the extraordinarily

punitive assessment and property tax changes imposed by the province. In Toronto, that change reduces taxes for large office buildings and substantially increases taxes for businesses on retail strips, as you've already heard from the board of trade. This bill proposes to protect these property owners from these monstrous changes that you indeed have inflicted.

If municipalities decide to exercise this option to cap taxes on these properties, then homeowners, condo owners and cooperatives will bear the brunt of any municipal expenditure increases in future years, and the full brunt of property tax change this year and in future years.

In short, this bill forces municipalities to choose between two stupid alternatives. It tells municipalities they must slash their own throats and then asks them which rusty razor they want to use. Who ever thought MPPs in Ontario would be so cruel, so compliant with such malign instructions? I say don't do it.

The impact of Bill 16 and other property tax reform legislation on homeowners in parts of Toronto is astounding, and that's even without any expenditure increases. Contrary to what Bob Sniderman was telling you, in fact the results of this and other property tax reform legislation is extraordinary. I have included a chart at the end of the brief, which I think you have a copy of, which outlines some of those changes. That is taken from a city of Toronto study entitled *Property Assessment and Taxation System Preliminary Tax Impacts — Summary*.

In North York Centre ward, 89% of all homeowners will experience a property tax increase, and the average increase is 35%, which is about \$2,000 a house. That's what you're imposing. In North Toronto ward, 92% of homeowners face a property tax increase, and the average increase will be about 48%, \$2,500 a house. The attached charts list some of the extraordinary increases that will result to homeowners in Toronto from provincially imposed property tax reform. As a government you can talk all you want about giving people a tax break, but you are doing it for some at the expense of these homeowners. Shame on you.

One reasonable alternative is to extend the 2.5% cap to everyone and, again, allow municipalities to levy property taxes as they see fit. I think it's the only sensible thing to do and it's relatively easy to accomplish. I've suggested some wording changes to do that. I would ask you to please make those amendments.

The second point is with regard to the death of the democratic tradition in Ontario. The traditional legislative process followed in Ontario involves extensive public information and involvement. Government publishes and distributes a white or green paper and invites comments. A special committee is appointed to hold hearings around the province, usually followed by draft legislation distributed to those expressing interest.

The third step is the introduction of legislation. Substantial debate is permitted on second reading, and bills are without fail sent to committee for full hearings, usually throughout the province. There are opportunities for

everyone to suggest amendments and to talk to political representatives in an attempt to make changes.

1020

The Harris government — your government — has thrown this traditional process out the window. The example of Bill 16 is typical of what the government has done to this traditional process. Bill 16 was introduced on May 7. It is 73 typewritten pages of very complex language, amending nine separate statutes and containing numerous very complicated formulas.

No white or green paper preceded this bill. No explanatory notes are available to make the bill intelligible to an informed public. No notice of the bill has been provided to anyone in the province, even though it is of province-wide application. The government has agreed to a mere three hours of public hearings, with nine speakers — I thought it was 12 but it's nine — telephoned only yesterday to be told to prepare, for something that affects every municipality in Ontario.

This is part of the government's shameful strategy to keep the public in the dark about what it is doing. This strategy bears no relationship to government of the people, by the people, for the people. This is rule by an autocrat who says his way of ruling can't be questioned.

Running government like a dictatorship between elections is wrong. Government doesn't know best. You guys don't know best. Mike Harris doesn't know best. Like the governors before responsible government was established in Upper Canada, Harris deliberately excludes the public from any say in how government works or what legislation is being changed. This is wrong.

Our remedy is simple: Restore democracy to Ontario. Explain what legislative amendments are all about. Hold reasonable hearings on Bill 16 and on all other legislation. Allow fair consideration and debate on Bill 16 and on all other legislation.

Third, the details of Bill 16 are probably wrong.

The bulk of the bill amends legislation the government passed just last year, often with a minimum of public hearings and consideration. The capping provisions only occupy about 20% of the bill; the other 80% of the bill is making changes to things you guys did last year and got wrong. In your rush to bludgeon the public and the opposition into silence in 1997, the government proceeded very quickly. It obviously made many mistakes which it now wishes to correct.

Haste makes waste — and confusion. Since the government is unwilling to give the public or anyone else any reasonable opportunities to give fair consideration to this legislation, in all likelihood the government is again passing legislation riddled with mistakes.

The May 25 letter to the provincial Treasurer from the Association of Municipal Clerks and Treasurers of Ontario sets out the problems with this bill very simply and very strongly. As that letter notes, this bill is badly drafted — some stupid errors in it — and if passed, it will destroy the finances and the financial viability of municipalities.

I note that even the board of trade is very concerned with some of the proposals you've made. I know they pat you on the back a lot, but they also say: "Don't do what you're doing. We've got to have more discussion about the number of classes you're trying to create." You're rushing things through. People don't know what you're doing and when they do know what you're doing, they think it's usually wrong.

I can only assume the leaders of this government have gone slightly daft if they really want you to vote for the detail of Bill 16. Don't be so foolish.

The Chair: Thank you very much, sir. We have approximately two minutes per caucus and we'll start with you, Mr Silipo.

Mr Silipo: Thanks, Mr Sewell, for being here. Just to be clear, we had actually proposed some weeks ago to the government a way in which we could have limited debate in the House in order to allow the bill to come to committee, have more time spent in committee to hear from other people, and actually have the kind of examination of this legislation that we believe should be taking place, because, like you, we believe that no matter what amendments are made, and we still don't know what those are, there will likely be, as you say, major mistakes that will still have to be dealt with in future, probably through further legislation as has been the pattern so far.

I want to ask you particularly around this recommendation that you make in the first part of your presentation, that one of the reasonable alternatives to the 2.5% cap and the split that causes between residential on the one side and business assessment is to extend the same protection to the residential side. That's certainly something we would support.

Mr Sewell: I think that cap should happen only for assessment purposes.

Mr Silipo: Right. You were here earlier to hear, I guess, the reaction against that from the board of trade. I just wondered whether you had any comment to make on that.

Mr Sewell: Quite frankly, I don't understand their position. Their argument is a very strong one that says, "Look, the 2.5% cap on commercial still says you have to raise the same amount of money from commercial, so why not do it?" Putting the 2.5% cap on residential is exactly the same. It's not as though you're transferring anything on to commercial taxpayers by putting that 2.5% cap on residential properties. So if it applies to commercial, it should apply to residential.

The Chair: Thank you, sir. I must interrupt there and move to the government.

Mr Baird: Thanks very much for your presentation. I just make a comment on one point you raised. The commercial rates in Toronto are about 600% greater than those of residential rates. That's certainly one of the reasons the cap isn't extended to residences as well. There are some measures in existing legislation to phase it in over eight years and, as well, to provide for low-income seniors and low-income disabled.

Mr Sewell: That argument has nothing to do with —

Mr Baird: I did note in your presentation that you showed it in 10 wards, but in the city of Toronto is it not the case where 54% of households are actually getting a decrease, that have been paying too much tax, that are getting a tax cut? Wouldn't that be in the interest of fairness to say to those 54%, "You've been paying too much," because 54% would see tax decreases in this proposal?

Mr Sewell: It's a very interesting way to proceed, which is to say, "Let's impose an unthought-out reassessment of properties," and then say, "Let things fall as they may." It's interesting you won't do that in the commercial-industrial class. You will not say, "Let things fall where they may." Instead you're rushing in with the 2.5% because you realize it doesn't work.

I'm saying it doesn't work in the residential class as well. But maybe it's true, maybe you have something against people living in the North York centre ward. Maybe you do have something against people living in North Toronto ward where 92% of people are going to face a tax increase. I think that's stupid and you shouldn't do it.

I believe that if you went around the province, if you had the guts to go around the province, you would be inundated with people who would say, "Don't do it." Instead, you have three hours of hearings. You can make your fancy arguments, but go out to North Toronto ward and sell your argument. You won't get out of there alive.

Mr Phillips: Just on process, Mr Sewell — I appreciate you being here — the way they're doing it is deliberate, in my opinion.

Mr Sewell: I think you're right.

Mr Phillips: I'd like your opinion on it. First, the Legislature didn't come back until a month beyond when it should have come back. We wanted to come back in March; they came back at the end of April. They then introduced this bill. We said, "Let's have hearings right away." They refused to have hearings. They delayed it to the last minute and now, frankly, they're beyond the last minute. It's costing our municipalities \$1 million a day in interest costs as a result of their delay. Now we've got a gun to our head. The municipalities are saying, "Get this bill passed," and the government has put that gun to our heads.

My question to you is, as you watch the Legislature, is this part of a pattern that you see around here, from the outside, because certainly I see it from the inside? Second, why isn't the public more upset about what I regard as a lack of debate on legitimate bills?

Mr Sewell: I believe it part of a pattern. I believe this government and these people here who vote for it, the Morley Kells and the Steve Gilchris of the world, want to destroy local government as they've done in Toronto. They've literally introduced legislation to try and do that. They literally have taken our government away from us in Toronto. I think they want to do it. I've read the brief of the Association of Municipal Clerks and Treasurers. I believe it will wreck the financial viability of many

municipalities in Ontario if they pass this legislation as it now stands. I think that's a deliberate attempt.

1030

In terms of whether the public is upset, I think the public is very upset. They don't believe that you can say anything to this government and it will listen. The way you can tell it's upset is, I don't believe any member of the cabinet is safe walking down any street in Ontario. They're going to be yelled at; people are going to throw things at them. The reason you can tell that is, it doesn't happen. Most politicians like glad-handing. But let me tell you —

Interjections.

The Chair: Order. I want to hear from the witness, please.

Mr Sewell: Go down those streets; you'll be pretty unhappy. Your leaders will find that people will be coming up and causing a lot of trouble to them.

Interjection.

Mr Sewell: Fortunately, they don't know you, Morley. I know you.

Interjections.

The Chair: Order. Thank you. Please.

Mr Sewell: The point is, as a citizen you come, you get yelled at, you get called a coward. What's the point?

The Chair: Please.

Mr Sewell: Mr Chairman, be clear about this. We're supposed to be living in a democracy. You're supposed to be consulting people about legislation. Having nine members of the public speaking is not good enough. Do your job. Represent people.

Interjections.

Mr Sewell: What's that?

Interjections.

The Chair: Please, Mr Kells, he's lecturing me now.

Mr Sewell: You've put out stupid alternatives. They should be called for what they are. They are not well-thought-out; they are badly thought out. Everybody has made that point. I don't think any of you people know much about them. You probably don't even know the amendments you're going to be presented with. This is no way to run a democracy; it's a dictatorship.

The Chair: Sir, I'm sorry, I'm on a tight time schedule. I do appreciate your coming.

Mr Sewell: I know it's a tight time — that's the problem.

The Chair: Thank you very much for coming. Thank you for your comments. I apologize for the interruptions. You were a guest and poorly treated and I apologize.

TORONTO PROPERTY TAX FREEZE

The Chair: The next presentation will be from Toronto Property Tax Freeze. Mr Opara, please come forward. Welcome and thank you for coming.

Mr Michael Opara: I'd like introduce Councillor Michael Walker of the former city of Toronto and the new city of Toronto, and Councillor Norm Gardner, a former councillor of the city of North York, now councillor for

the city of Toronto and the head of the police commission. I'll be very brief before I turn it over to these two gentlemen. We're also expecting someone else.

Our group has been holding rallies and has organized the businesses, the merchants. We've had the street demonstrations; we've picketed your fund-raisers, some of the fund-raisers that have been going on, as you probably know. We have more rallies planned.

You've really got yourselves into a serious political mess. It's not just in Toronto; it's throughout Ontario. It's in Whitby, Kingston, Belleville, Ottawa, Markham, Mississauga, Hamilton, just to name a few of the municipalities.

You're introducing this legislation. It's terribly flawed. The municipalities won't be able to get their tax bills out, probably, until the end of the year. You're heading into an election. What you've done is really unnecessary. It reminds me: It's like a mechanic. You've got a little problem with a spark plug, you take the spark plug up, you damage the engine and suddenly you've got the whole engine apart on the garage floor and you don't know how to put it back together again. It's a total disaster.

The problem is not just in the old city of Toronto or North York Centre South; it's in Etobicoke, Kingsway, Humber — we're holding rallies there — it's in the Scarborough Bluffs area; it's in East York and York. It's not confined just to the city of Toronto. People in Mr Gilchrist's riding: Believe it or not, some of those people are going to lose their homes. Tens of thousands of people across this province are going to lose their homes. You cannot go into an election — if you want to, go ahead, but you're really doing something that you don't have to do.

We have a paper here; you can read it.

This bill will not survive a court challenge. We intend to have this challenged in court. It'll end up getting thrown out in six months because the assessments are so badly flawed. We've done a lot of research; about 80% of the assessments are way off. Now I turn it over to Michael Walker.

Mr Michael Walker: To be honest with you, these hearings are a bit of a mockery in terms of the exercise of democracy on a major bill that's affecting taxpayers across this province: to have a few minutes; rushed through. Finding out about it late last night is not the way to go, but that seems to be the pattern with the government, and you're its Chair today.

We've now got a fourth version of this legislation. Each version really is an admission that the earlier version has failed. This last version is just that. It's another joke. It's 73 pages long, trying to pick up the earlier three pieces of legislation. What you should understand is that the well is poisoned and you can't unpoison it with another piece of legislation.

The impact is not just in the city of Toronto, as some of you are sort of giggling away, this is going to affect everybody across the province. The people who get a tax increase will remember who gave it to them, and it wasn't their local council. It's time for you to drop it. If you go ahead with this legislation, plus the piles of other legis-

lation on this issue, the disruption of people's lives will be spread across this province. In my opinion it is unconscionable that you're carrying forward with it.

With this final piece of legislation you don't have any more equity than you have today. That's the bottom line. If you did, 2.5% caps took it away. It's an admission. It's the next thing farthest from market value that you can get. I watched a movie the other night, *Cat on a Hot Tin Roof*. Burl Ives said that mendacity and hypocrisy were alive and well. This was back in 1958. But that's what this is. It's garbage on top of garbage.

You should go to the local option. Give it back. Give the problems for raising municipal taxes and designing the tax system to the municipalities where it belongs. That's called disentanglement. That's called delegating those responsibilities. Load them on where they should belong. Make those local governments responsible for designing and getting public acceptance of a tax system in their municipality.

Give them a menu of tax options, such as: It can be the British county tax system; it can be the tax system of unit assessments such as you have in Tel Aviv; it could be a Proposition 13, market value at point of sale; it could be that if people want to embrace and take your proposal to bed, let them. But why are you trying to impose on them one size fits all? The problem is, it isn't a good size.

Michael Opara said it all. You started out tinkering with this thing. You took the spark plug out. You now have taken the whole engine out and you can't get it back together and you're desperately trying to cobble something else together.

The municipal clerks and treasurers said it all, "We'll get chaos and ruin." That's from the experts out there. If Bill 16 doesn't go through, there are no caps: 300%-plus increases for businesses are back on the table. Drop it and come out in favour of local autonomy and a local option.

Mr Norm Gardner: This is not just a Toronto problem. The Association of Municipal Clerks and Treasurers of Ontario have given some comments in regard to CVA. In their general observations they've indicated: "There are over 25 specific controls and directions through regulation. This amount of administrative discretion is excessive. It leaves administrators and municipal councils without certainty. Many of the regulations" are going to "place the financial stability of municipal governments in jeopardy. There is, furthermore, little opportunity for municipal councils to comment and recommend changes to regulation.

"This bill is complicated, cumbersome, confusing and, too often, badly drafted. It serves to perpetuate the bad system that the government was so bent on eliminating. The end product is a political and administrative nightmare. Sophisticated systems and specialists will have to be developed to manage not only the complexities of Bill 106, 149 and 164, but now Bill 16 as well. Ontario municipalities will not be able to implement the complex taxation system without a substantial commitment of time, effort, resources and tax dollars."

1040

To put it in a basic clear system, the whole assessment situation is in a mess. They don't meet, as others have told you, the government's own standards in the legal test of the legislation. For the most part, CVA has pitted councillors against councillors, based on how many constituents benefit, without taking into regard the casualties there are going to be as a result of it. The most negatively affected are primarily seniors or people who are on fixed incomes.

In my own constituency, the average increase is just under 40%, but that means there are a lot of people — I've had a widow tell me that her taxes went up 66%. She's not able to come up with those kinds of dollars based on her fixed income.

This has become a shock to a great many people who have had stability in their lives and now they've just been jolted by the instability of the CVA. What these people need is time to rearrange how they're going to live in the twilight of their careers. As I said, the increases are devastating to people in this kind of situation.

CVA is a location tax. You can have a property, maybe it's free and clear, so now you're asset rich and cash poor. This is another way of describing what's going on. In checking a lot of the complaints that have taken place by people who have complained about CVA, we found that people who paid \$250,000 for a property were assessed at \$350,000. When they complained about the \$100,000 discrepancy, they were told, "You got a good deal." People just don't buy that. There have just been too many of those situations.

Prices of property in Toronto vary as the economy goes, so sometimes you have large fluctuations in the prices. This is going to put a real problem on the shoulders of many of the people who need some kind of stability as far as their incomes go.

CVA is tantamount to pushing an elephant through the eye of a needle. You can't do it without a lot of cutting up being done. At best, we need a freeze for a year so that you can go back and re-examine the pros and cons of this, because there are advantages to doing this but there are a lot of disadvantages and you've got to try to find a system that will take care of the negative aspects of this kind of legislation.

As I say, we need a freeze at best and at second best we need a cap so that we don't dislodge all these people and we don't pit municipal councillors against each other just on the basis of numbers of constituents who are going to benefit.

The Chair: Thank you very much. We have about one minute per caucus and we'll start with the government caucus.

Mr Gilchrist: In a minute it's tough to do much more than rebut a couple of the factual errors in your presentation, with the greatest respect. Mr Opara, 87% of the households in Scarborough East go down, so I don't think anybody's been losing their homes. In fact, it's just the opposite. Right now, Scarborough residents in aggregate pay \$100 million more than they should under a fairer tax

scheme and that's why I think it's quite important to point that out.

Also, you talk about a number of other communities. Let me tell you, in the case of every one you list, a majority of the homes go down. In Kingston, for example, 69% go down. More importantly, because they had up-to-date assessments, because they did have the courage to confront fairness over the years — for example, Kingston brought in MVA in 1992 — only 3% of their houses go up by more than 20%; in London, only 1%.

In Toronto, where they haven't done anything for 58 years, here and only here are you finding the need to rebalance as dramatic as it is, but that's precisely why: because the politicians haven't had the courage to get the fair tax from all the properties in the Toronto area. Instead, they stuck it to small business, they stuck it to renters and they stuck it to industry, driving it right out of the city.

Mr Opara: Is that a question?

Mr Gilchrist: That was a statement.

The Chair: I think it was a statement. Mr Phillips?

Mr Phillips: I'm here to get kind of get your advice rather than to attack you. Mr Gilchrist loves to hear himself talk. This is a public hearing to hear your views on it. The challenge for us is, what advice do you have when earlier AMO said — they have a gun to their head — it's costing the city of London, for example, \$390,000 every month that this bill isn't passed, so they were saying, "Get on to pass it."

Your advice is to delay it for a year, but the municipalities are telling us to pass the bill. What advice do you have for us?

Mr Walker: I would suggest that you do delay it, because first of all, you're going to have to backdate all these increases. Mr Gilchrist can go around and pound his chest, but there are 17% who are getting increases. I understand Mr Gilchrist likes to look at himself in the mirror too, but all I say to you is you should defer —

Mr Gilchrist: I know what Lastman said about you too.

Mr Walker: I didn't interrupt you, Mr Gilchrist.

Mr Phillips: You're going to have to get Mr Gilchrist under control, Chair.

The Chair: Yes, I'll work on it. I'm also going to keep the clock under control. You've only got a couple of seconds left.

Mr Walker: Delay it and try to work something out that the clerks and treasurers can at least try to administer. Do you want to backdate and send out the bills back to January 1 for all these increases? Where are the people going to find that?

Mr Phillips, if there was any common sense, this thing would have been dropped long ago, but more particularly now because they're not going to be able to implement it until September or October.

Mr Silipo: If I can just follow up on that, I agree very much with your position and your point that we should try to stop everything and leave tax assessment as it is for at least a year and go back, but that's unlikely to happen, as

you know. Given that, then I hear what you're saying about the 2.5% cap and that's something certainly I support. I have no idea what the government's going to do on that. But if the government persists essentially with this piece of legislation, what's going to happen out there come this fall?

Mr Walker: Rolling thunder across this province. People will get their pitchforks and start looking for the soft parts of certain MPPs.

Mr Gardner: Can I say something here?

The Chair: Very quickly.

Mr Gardner: In answer to your question, a lot of people aren't going to pay their taxes because they're not going to be able to pay their taxes. I've got constituents with 900- and 1,200-square-foot homes paying as much in the way of taxes as people in other parts of suburbia with 2,500- or 3,000-square-foot homes.

This is a big problem, what's going on in parts of the city of Toronto and parts of North York where we've had older neighbourhoods. It's a location tax, not one for service, not for what you're getting. When you think about what you're paying your taxes for, this is really how you should be raising your taxes, not based on just location as things change because something has become more valuable and a few homes in the neighbourhood have sold for higher rates because somebody wants to put a monster home where you've had a 900- to 1,000-square-foot bungalows. Those are the kinds of things that happen. The property gets more valuable because somebody can do something better with it than you are doing with your own because you've been living there for 40 years and you've been happy with the way you've been living.

We have over \$100 million a year that never gets paid in taxes now, so what are you going to look for, \$200 million, \$300 million in unpaid tax?

The Chair: Thank you, sir. I'm going to have to interrupt you there. I thank you very much, gentlemen, for coming in. Thank you for your time and your presentation.

Mr Opara: We're going to have the biggest tax revolt in Canadian history.

The Chair: Thank you very much, Mr Opara. Your time is up.

TORONTO ASSOCIATION OF BUSINESS IMPROVEMENT AREAS

The Chair: The next presentation will be from the Toronto Association of Business Improvement Areas, Mr Ling. Welcome, sir. Thank you for attending. You have 15 minutes to use as you see fit.

Mr Alex Ling: Thank you. This is going to be a quiet time for a little while.

Mr Chairman and members of the committee, my name is Alex Ling. I'm president of the Toronto Association of Business Improvement Areas. I am also proud to be chairman of Bloor West Village, Canada's first business improvement area. It's been in existence since 1970, 28 years already.

As you know, BIAs operate under provincial legislation, section 220 of the Municipal Act, which allows us not only to volunteer our own time but also to bring money to make improvements in each and every marketplace. There are now 38 BIAs in the amalgamated new city of Toronto and last year the amount they contributed was around \$3.5 million.

1050

Early this year when the city of Toronto floated this commercial rate of 7.49% for commercial and 1.24% for residential, of course with the new assessment it kind of scared all the small businesses because we just cannot afford it. Some of us increased up to 700% or 800%. We are very happy that instead of demonstrations and marches and everything, the Toronto association took the route of meeting with the government and Mel Lastman and his staff to show both sides our concerns and get things together. We are very happy that the Minister of Finance, Ernie Eves, made the announcement to have the 2.5% cap. We are very, very happy about that because we believe that if your assessment goes up because of your outdated assessment, you should be paying increased tax. However, we also realize that those who are in line for a large amount of decrease should be entitled to some relief. I think this 2.5% for the next three years will slow things down a little bit, allowing the government and us to have more input to get different classifications and everything going.

Getting back to the 7.49% tax rate, which really bothers us as small business people — you know, hindsight is 20-20 — if the city had realized at the time that floating that rate out would have a very devastating impact on small business, it probably would have got things straightened out with the provincial government before they made the announcement. But now that there is the 2.5% cap for three years, think ahead: What happens after the three years? If we don't do something about it, we're going to have the whole nightmare all over again. I'm suggesting that perhaps the government might think about classes, subclasses and everything else. They might think about pegging small businesses to the same rate as the residential, because the BIAs are made up of mainly small businesses, mom-and-pop shops a lot of them. This is typical of BIAs.

A number of you have visited some of the BIAs or have a BIA in your hometown and you know how they operate. They have become part of the communities. As I say, we not only volunteer our time but we also bring money to revitalize the marketplace. This not only benefits the businesses but also benefits the whole community. It makes the whole community vibrant, safe, a good place to live, to work, to shop, to raise a family. You should see the small businesses as part of the community. Pegging the tax rate to the residential rate will prevent some of the city councillors from raising taxes on these businesses. Often they realize that some of the business people may not necessarily live in their ward and therefore they sometimes perhaps have not as much concern about business as far as the municipal tax rate is concerned and they feel

that business can pay for it. But they have to realize that the business strips are very important to their community. As goes the business strip, so goes the whole community. It's very, very important.

That's all I want to say right now. I just want to make it short and sweet so we'll all go for lunch.

The Chair: Well, not quite, sir, but I thank you for your presentation. We have approximately two to two and a half minutes per caucus. We'll start with Mr Phillips.

Mr Phillips: I appreciate you being here, Mr Ling. You're the president of the Toronto BIA. There was a question on the legality of the gross lease pass-through provisions for providing funds for the BIAs in a gross lease situation. The Association of Municipalities of Ontario this morning was concerned about whether it is legal or not. Has your organization looked at, in Bill 16, the gross lease provisions and are you satisfied that what is being proposed here will stand up legally?

Mr Ling: I'm not a lawyer. I was told it will stand up. I have not sought any legal counsel. I presume the government should have done their research.

Mr Phillips: Your members that have gross leases, have they commented on the provisions? I'm just curious whether we're likely to see a lot of appeals.

Mr Ling: They were told that they will be paying the BIA levies through the proposed legislation and they will continue to be full members of the BIAs. They are happy with that. They've been paying for years and they will continue to pay.

Mr Phillips: So from the legal point of view, you're not sure.

Mr Ling: I'm not a lawyer and I have not consulted legal opinion on this, but I presume that the government must have done their homework.

Mr Silipo: Thank you, Mr Ling. I agree very much with your approach in saying that the 2.5% cap is important for small businesses. As you know, that wasn't the position the government originally took, but we're happy that they've come to their senses, at least with respect to the need to protect small businesses.

I want to ask you to comment on the people who actually help you to stay in business, which are the people who shop in your store and others. You said yourself that in your particular neck of the woods, where you are, the vast majority, almost 70%, of residential taxpayers there will see big increases. They're not getting any protection under this legislation. Don't you think they should be getting the same kind of protection the government has seen fit to provide to the business sector?

Mr Ling: As I understand it, the amount of increase on the residential is not as great, compared with businesses. Also, I understand that a substantial number of residents in some of the areas are in line for a substantial decrease. I suppose this is something the government had to figure out, whether the residents who are in line for a large decrease, will they be happy with 2.5%? I guess they either go one way or the other. You cannot have a large decrease and a small increase, because it won't balance.

Whatever the increase is going to be, it will, as I understand, balance with the decrease.

Mr Silipo: That's true. Looking just at the figures from the city of Toronto, in the High Park area some 69.5% of residences will see increases averaging 34%. That's going to mean that a majority of people who shop in your neighbourhood are going to have huge increases that they're going to have to deal with and consequently, at the very least, far less money to spend, let alone people who might actually be in danger of losing their homes. Does that concern you as a small business operator?

Mr Ling: I understand that these are phased in over eight years. Am I correct, sir?

Mr Silipo: Presumably, if the city does that, yes.

Mr Ling: They will go three years and then they will start over again. Am I correct? Because reassessment —

Mr Silipo: I don't know what's going to happen after three years. That's the big question that we all have, what's going to happen after the three years, even on the business side, in terms of the caps.

The Chair: Excuse me, I have to interrupt you there and move to the government side.

Mr Hardeman: Good morning, Mr Ling. Thank you for your presentation. It's nice to see you again.

There are two items I wanted to quickly discuss. You mentioned the fact that at the end of the three years there needs to be something put in place as to what we do or what happens to the taxation for small business. Your recommendation is that we look at putting something in place that would put it at the residential rate as opposed to a special class. In your interpretation of the legislation thus far, would that not be possible for municipalities to do, to in fact have some discussions and decide what the appropriate rate for small business is, and that rate could be set at that local tax rate?

Mr Ling: It's very difficult for the municipalities to make this decision because you have so many councillors and they will be voting with their voters looking over them. Some of them will vote to peg the rate and some of them will say, "No, no, no, we want to put more tax on the businesses," because a number of businesses may not necessarily live in the ward that the councillor is in. Therefore, sometimes it's tempting to increase the tax on the small businesses because the vote actually comes from the residential.

1100

Mr Hardeman: The other item, if I could quickly, the issue of the pass-through of the BIA levy in fixed leases, does that deal with the issue of tenants being able to be members of the BIA and being involved in the BIA that you previously expressed to me in other meetings we've had? Does this solve that problem somewhat to your satisfaction?

Mr Ling: That doesn't solve the problem because the legislation says that the people who actually pay the levies are the members of the BIAs. A lot of members were devastated when they found out earlier that they may not be a member because they don't actually physically pay the BIA levies. Now, this will solve the problem. I

presume that it will be legal as was raised before. I hope it is.

The Chair: Thank you, sir. I'm going to have to interrupt you there. The time is up. I thank you for your time and for your attendance this morning.

ASSOCIATION OF MUNICIPAL CLERKS AND TREASURERS OF ONTARIO

The Chair: The next presentation is from the Association of Municipal Clerks and Treasurers of Ontario. Ms Best, welcome, and thank you for attending. If you'd introduce the people with you, you have 15 minutes to use as you see fit.

Ms Cathie Best: My name is Cathie Best and I'm president of the largest voluntary association of municipal professionals in Canada, the AMCTO, the Association of Municipal Clerks and Treasurers of Ontario. With me today are fellow executive members Ken Cousineau and Bob Heil. Ken is executive director of our association and Bob, in addition to being a valuable board member, is corporate manager for the town of Haldimand.

Clerks, treasurers and chief administrative officers provide the professional expertise required for the efficient, continuous and professional delivery of municipal services. We're the professional non-partisan public servants in municipal administration.

Over the past week, a few legislators and senior government officials have claimed that our concerns relating to Bill 16 result from a misunderstanding of the legislation. Clerks, treasurers and CAOs are the experts in interpreting legislation and we, not they, will be responsible for its implementation. If we have problems with this legislation, if we don't understand some of it, and we've done our best to interpret it, then all I can say to you is that we are all heading for serious trouble.

Again, we believe as AMCTO members we do understand this legislation and that's why we're here today to exercise our professional duty by flagging our significant concerns and issues that will be problematic if Bill 16 is passed in its current form and applied across Ontario. What we're offering is a dose of foresight. We are appreciative of this opportunity to appear before this committee and to present these views to you and propose amendments to correct at least some of the major problems.

The AMCTO recognizes that the provincial government is trying to provide municipalities with tools: tools for self-governance, increased flexibility and increased autonomy. We also acknowledge that there are severe time constraints in place that deny any of us, legislators included, the luxury of a complete overhaul or rewrite of this bill which, in the best of all possible worlds, we'd recommend to address its manifold problems.

In the absence of a complete rewrite, in order to mitigate the impact of this bill, we propose five priority amendments. However, we must caution that, even if all of these amendments are adopted, Bill 16 will continue to cause numerous problems. For those of you interested in a

more detailed version of our concerns and proposed amendments, we have copies of the submission we made to the minister.

Our five critical amendments are as follows:

(1) Provide municipalities with the option of having the 2.5% cap apply to assessment-related increases only, or alternatively, to both the assessment and net levy-related increases.

(2) Extend the decision period on the 2.5% cap to a minimum of 30 days after the on-line property tax analysis system is up and running.

(3) Remove the eight-year maximum on phase-ins and leave the phase-in-related decisions to the municipal councils.

(4) Have the provincial government agree to fund the maintenance of the 1997 frozen assessment roll. The government has calculated the cost of this to be approximately \$3.5 million spread over three years for the maintenance of the system. In the context of government expenditures this is nothing, but represents a substantial commitment for municipalities that opt for the 2.5% cap.

(5) Provide the option that charity rebates be offered as either tax credits or cash rebates and that these rebates be confidential and in proportion to tax instalments.

Unfortunately, time is working against all of us. However, we cannot afford to have haste dictate such a fundamental change agenda.

The cumulative effect of Bills 106, 149, 160, 164 and now Bill 16 is sure to create confusion and administrative chaos. The AMCTO has met with the minister's staff, the public servants in charge of the municipal legislation, and has presented detailed, thoughtful and rational proposals and insight.

Today we ask you in the name of sound administration to accept nothing less than the five critical amendments we have outlined to address Bill 16. Our purpose is not to create problems for this or any other administration but to prevent problems which are destined to manifest themselves if Bill 16 is not amended.

Thank you for your time, attention and hopefully your action in this matter.

The Chair: Are there other comments you wish to make or are you prepared to —

Ms Best: We're prepared to answer questions.

The Chair: We have about four minutes per caucus.

Mr Silipo: Thank you for being here. First of all, I just want to say, as I think I've said in the House, that I believe it was your intervention over the last week to two weeks that has resulted in us at least being here in this very limited fashion. Had you not put forward your concerns as the administrators, as the people who are actually have to implement this thing, the government would simply have rammed the bill through the House without any amendments whatsoever and you would have had to deal with the fallout of that later on. So I appreciate very much not just your being here but what you've done.

I just want to ask you whether in terms of the five — and again, I appreciate the way you've come forward and said, "Look, there are a bunch of other problems." There

are many things, if I've heard you correctly, both today and in the things you have written, that essentially, if we could do it, the best thing would be to do a complete rewrite of this. But if we can't do that, if the government isn't prepared to do that, then here are five basic bottom lines that have to be met.

Do you have any sense from your discussion with the minister or the ministry officials that the government is prepared to move on any or all of those five areas? We don't know, as we sit here, what the government is going to do and we probably won't find out until this afternoon. I don't know if you know any more than that.

Ms Best: We have had some indication from the ministry staff that there may be some leeway on the 30-day proposal in terms of evaluating the system, to extend that, but have not got confirmation on that as yet.

Mr Silipo: The first of the points you make on the 2.5% cap and applying that to assessment-related increases only, how crucial is it from your perspective that that be done?

Mr Bob Heil: The issue is that if the 2.5% cap in the current Bill 16 remains, the effect is that that will seriously impair the municipal ability in the future to raise taxes over the next three years, if for no other reason than its own tax policy. I should qualify that. If a municipal council elects to raise taxes with this 2.5% optimum, the shift or the increase above the 2.5% for commercial-industrial will have to go to the other classes, residential and farm. The council is not hand-tied. It can raise the taxes but it will shift it all to other classes.

1110

Mr Hardeman: Thank you very much for the presentation. First of all, I want to agree with the member opposite that we are appreciative of the fact that you came forward with your concerns on the bill and put forward your suggestions for changes. I'm sure, after the public participation this morning, when the amendments come forward, your concerns will have been considered. Whether they would have been addressed or not, I have no way of knowing, but they will be considered. I'm sure we can be assured of that.

I have just a couple of questions on your five proposals. The first one is as it relates to the taxation or the allowed increases above the 2.5% cap, that the cap would only relate to the assessment changes, but you also say, alternatively, that it applies to the net levy-related increases. I'm not sure I totally understand the "net levy increases" as opposed to the other, what it presently would be. If you allow the levy to increase only to 2.5%, how would that alleviate the concern you expressed?

Mr Heil: Currently Bill 16 says a 2.5% cap, and that's on everything. That's net levy. We're asking the government to provide the councils, very responsible people in their own communities, with the tools to decide whether they're going to freeze their own levies at 2.5% or simply manage the assessment-related increases and make their own decisions with respect to their own tax policies above the 2.5%. We're asking the government if it will amend

the legislation to provide both of those options for responsible councils.

Mr Hardeman: The second question is on item 5, and it relates to your tax credits as opposed to rebates to charities. Does your organization have any suggestions of how you would impose that pass-through, that in fact if it was a tax credit on a rental property, how one would guarantee that the charity actually got the tax credit as opposed to the landlord?

Ms Best: Under the current legislation the landlord is required to pass that along to the tenant. We're supposing that under this legislation that would again take effect, that a tax credit would be passed on to the tenant.

Mr Hardeman: So your interpretation of the legislation is that the tax rebate would go to the landlord to be passed through to the tenant?

Ms Best: The total property would get the rebate and those rebates would have to be effectively reflected in the rent on the property to the tenant.

Mr Phillips: I smiled to myself at the comments before because I appreciate that your association has been, I think, the one voice that's been trying to get the government to listen strongest, and it was, as you know, at the very last moment that the government finally agreed that you maybe have some legitimate — like, literally. They were ready to call a motion in the House calling for complete closure on the bill with no amendments and withdrew it minutes before that, right after your press conference.

My first question is, you're going to be responsible for implementing all of these bills, 106, 149, 164, 160, 16, all the property tax bills. Even with the anticipated amendments, can you give us some sense of what's likely going to happen on the property tax issue over the next two to three months? Is it smooth sailing? Should we here in the Legislature expect a few phone calls, or is this now all patched up and we can move on to other issues?

Ms Best: I imagine it will not be smooth sailing. There will be problems ongoing, and we've addressed that in the presentation. Even the amendments we proposed will not address all of the problems that are going to be encountered in this legislation. There is a lot of confusion out there right now. There are a lot of misunderstandings and those will have to be addressed. I'm assuming that there will be phone calls both to your offices and to the municipal offices, to the municipal councils and mayors and to staff in the municipal offices, to try and sort out the details of the legislation and what exactly is going on.

Mr Phillips: When would you expect the final tax bills to be going out, on average?

Mr Heil: We'll be optimistic and say late August. That's, I believe, very optimistic. I can expect September. We're scheduling September in my own municipality.

Mr Phillips: How are you going to handle the cash-flow issue then?

Mr Heil: We have to borrow. That's all we're going to have to do, unless the government can provide some amendments in here to help us with our cash flows, further advance of our grants, again deferral of payments to the

upper tier, the continuation of the commitment of the payment of the school levies, so that we can get back on our feet. I don't believe our cash flows are going to be in very good shape probably until the middle of next year, would be my guess, because of the bills that we're going to be sending out with due dates somewhere around Christmas. I know where my priorities are as a taxpayer.

Mr Phillips: I did a calculation: I figure that you've got about \$7 billion left to bill, about half of the \$14 billion. The interest on \$7 billion a year, let's say at 7%, is about \$490 million, so it's \$40 million a month. Every month it's delayed, it's \$40 million. That's why I get a \$1-million-a-day cost to the Ontario taxpayers. Is that ballpark correct?

Ms Best: We haven't done a calculation on that. We'll rely on your figures if you like, but we haven't done a calculation ourselves.

The Chair: I have to interrupt there. I thank you, Ms Best, for your attendance. Mr Heil and Mr Cousineau, thank you very much.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Chair: The next presentation is from the Canadian Federation of Independent Business, Ms Andrew. Good morning and welcome. Thank you for coming. Please introduce your confrère. You have 15 minutes.

Ms Judith Andrew: Good morning, Mr Chairman and members of the committee. I'm Judith Andrew, executive director of provincial policy with the Canadian Federation of Independent Business, and I'm joined by my colleague Ted Mallett, who is CFIB's director of research and the author of a number of our studies and briefs on property tax and very knowledgeable in the area. You will find in the kits you have before you a couple of those studies as well as some things we've presented in the past, but this time in living colour, some useful charts that we'll refer to as we proceed.

We appreciate the opportunity on behalf of CFIB's 40,000 small and medium-sized business members to appear before the committee and present our views today on Bill 16, the Small Business and Charities Protection Act. As the committee will know, CFIB has been very active on local property tax issues and we've tried to be a constructive but very vocal voice in working towards a fair and meaningful reform of Ontario's property tax system.

As always, CFIB's views are based on the opinions and experiences and results from surveys of thousands of small and medium-sized business owners who do business in all segments of the economy and from all parts of the province. Our interest is not in searching out other groups or regions on to which property taxes can be loaded, but rather we would like to recommend solutions that will strengthen communities, strengthen the economic fabric of cities, towns and villages throughout Ontario, as well as improve the political accountability of local government with respect to taxation policy.

As a system, property taxes in Ontario impose very real problems on small business owners in the community. Property taxes are insensitive to profits and this means that tax burdens are applied unevenly across the economy. Committee members will be aware that Ontario is the property tax capital of the world, and in this regard I would commend to your attention to figure 3 from the coloured charts, which shows that Ontario extracts over 5% of GDP in property and wealth taxes. It's the leading jurisdiction, before Canada and all of the other OECD countries compared there.

High tax levels in Ontario means that businesses are paying more for services than they actually consume, and the variability of the assessments means that the property owners don't have the ability to plan for their tax expenditures even in the short term. In this regard, we are very sensitive to the previous presenter's points on the complexity of the reforms, the time pressures that are facing all of us, and we find it very disturbing on behalf of our members that tax bills will be delayed until August or even September.

Our recommendations in this whole area have, throughout the piece, been consistent, clear-cut and transparent. First, we need to set a fair system of assessment; second, we need to set a destination goal on how the tax loads should be distributed by class; and third, we need to set into place the series of steps necessary to reach that destination.

My colleague Ted Mallett will now describe where the reforms have fallen short, but why at this juncture this particular bill and its legislation, with improvements, is needed.

1120

Mr Ted Mallett: We have been meeting with the province and municipalities for years. We've been getting information from our members about the problems with the property tax system. We've been working hard to develop a constructive approach to tax reform in Ontario, as well as through the process of the legislation, especially over the past year.

We are being asked to support, really, a second-best. This is a patch for a number of problems associated with previous legislation. We had hoped that our solutions would have been taken earlier on. We favour strong provincial leadership on this issue. We're not enamoured with the idea that municipalities should have wide-open powers to set rates and tax distributions because of the experience our members have told us of with regard to the small business community and with the experiences we've seen so far to date with the tax reform.

In our view, municipalities are really unable to handle many of these responsibilities because their political structure favours short-term residential voting interests as opposed to long-term business and economic needs of the community. Our views have been reinforced by the universal approach in Ontario that we've seen so far: almost to 100%, every municipality appears to want to retain the distortions from the old tax system.

If you look at chart 1, you can see an example of a number of cities across Ontario: Toronto, London and Ottawa. In Toronto commercial businesses pay 4.2 times the residential tax load, in Ottawa it's two times, in London it's 1.9 times. We haven't seen any movement or interest from municipalities about starting to lower that gap.

In Toronto, political decisions in the lead-up over the winter would have caused some absurdly unfair levels of taxation imposed on the small business community in that area, so Bill 16 is very necessary to ensure that those kinds of problems do not crop up. Therefore, we strongly endorse the plus-or-minus 2.5% cap on business. In fact, it resembles some of our key recommendations of the past, that everybody should have these very small increments or changes in their tax load to assist in the gradual phasing in of a new system.

We also strongly agree that the 2.5% cap should include all tax changes and not just those related to reassessments, because it does impose a financial rigor and accountability to the system. We also support the way the caps were applied to the business tenants in shopping centres and office buildings. The pass-through methodology is something we recommended and we're glad to see that the province is taking that approach.

CFIB is empathetic to the plight of charities as a result of tax distribution, but notwithstanding, charities face the same problems of the small business sector. Charities do see a mandatory 40% tax rebate structure, but we don't see any kind of mandatory measures towards protecting the small business sector in Ontario. In addition, if past behaviour serves as an indication for the future, the people who will be paying for that 40% tax rebate will be the remainder of the business sector, solely the business sector itself. There doesn't appear to be any kind of requirement for this money to be shared within the entire tax base.

Because of the road the province has taken, the decision to let municipalities define new tax classes appears unavoidable. Again, it's second-best. Trying to define tax rates according to the kind of business or the location is really problematic. Our favourite approach would have been to develop mandatory tax tiering based on the value of the property: that relatively low-valued properties that are similar in value to residential properties should be taxed at more or less the residential rates, and that as a transition measure the higher rates would apply to the much more valuable properties, but over time we would hope that the gap between business and residential would be reduced.

One of the other problems with the legislation is that we don't see any long-term goal. Giving power to municipalities may help their political interests, but we don't see any help towards the small business sector in defining their long-term expenditures, especially after the next reassessment.

One recommendation that we'd like to put forward strongly is an additional restriction not only on the tax ratios — the province has required that the tax gap cannot get any wider — but we would like to also recommend

that the province impose a restriction that the tax share, business or residential, cannot widen as a result of re-assessment. This is a relatively small measure, but it would be highly demonstrative to the small business sector that the province and municipalities would actually be interested in solving the high tax burden on the small business community and the large business community in Ontario. We would hope that this kind of measure of trust in the business sector would therefore create long-term interest in developing properties, expanding job creation and reinvesting in this province.

Ms Andrew: The small and medium-sized business sector is of course an indispensable part of the community fabric in Ontario. I've listened to previous presenters this morning and almost all of them have mentioned that. Therefore, we are calling on the committee to strengthen this legislation and make some of the tools available to protect small business more of a mandatory nature. We don't think municipalities need more flexibility in this area. In fact, we would strongly encourage the committee to recommend less flexibility for municipalities.

Small businesses appreciate the efforts by the Ontario government to minimize the worst impacts of property tax reform, but they certainly know that more is necessary and it has to happen quickly before the property tax system can be considered fair.

I thank the committee.

The Chair: Thank you very much, Ms Andrew. We have less than two minutes per caucus. We'll start with the government caucus.

Mr Ted Arnott (Wellington): Thank you for your presentation, especially on short notice. We certainly appreciate your advice and your considered opinions.

As you know, this bill was brought forward to correct a couple of the problems that were not apparent to the government when we brought forward Bills 106 and 149. That's pretty obvious and pretty clear. But you've obviously given us more work to do on the issue of property tax. Your figure 3, which shows Ontario as the property tax king of the world, demonstrates that there's considerable work to do for the province in trying to get property taxes down in an overall sense, especially as they affect small business.

For a time, you were proposing that there should be a special small business rate consistent with the residential rate. I assume you still support that as a recommendation for the government. How do you see that working if we were to adopt that proposal?

Ms Andrew: That particular recommendation is actually the very last sentence on the bottom of the second page of our statement. Essentially, we would recommend a tiered approach based on property value such that the first X thousand dollars of a property would be anchored at a rate closer to the residential rate. This would also allow small businesses that start initially, as they often do, in the basement or the garage, to move on to Main Street without taking a huge property tax wallop. It makes good sense from a policy point of view and it's pretty straightforward

from an implementation point of view, and we would very much like to see that one made mandatory.

Mr Phillips: Just help me a little bit on that. There are small businesses on Main Street and then there are identical small businesses in a shopping mall. Have you any recommendations for us on how the bill may ensure that both get fair treatment? I think we've got a lot of support for small Main Street businesses, but how could we ensure that in a shopping mall an identical business might get fair treatment?

Ms Andrew: You're talking about the issue of passing through the first X thousand relief to a small business in a shopping mall.

Mr Phillips: A principle, I think, is that identical businesses should presumably be taxed identically.

Ms Andrew: I would note that there aren't a lot of independent businesses in shopping malls because the lease arrangements in shopping malls work against them. In fact, they're treated badly vis-à-vis the anchor stores in shopping malls, so you tend to see far more small businesses on Main Street than you do in shopping malls, which is where the major chains tend to be.

Mr Mallett: Our primary recommendation is that no property owner should see large increases or large decreases in their tax load from year to year. The 2.5% rule is strongly recommended. We had recommended something very similar. If it takes 40 years for the tax system to become rebalanced, then it should take 40 years. Nobody should see huge tax changes. That's one way to ensure that businesses within the shopping malls and office buildings would not see huge increases or changes, though they would start to see decreases, and bring the tax rates closer to where the Main Street businesses are located.

1130

But it's also important to know, what is the tax goal? Is the goal to tax businesses at four times the residential rate? So far, we're seeing that the goal is that. The municipalities seem to say that is their long-term goal for taxation and that's where all businesses should be. Well, we say that's wrong. First of all, there has to be protection for the transition issues, but also these kinds of shifts or these kinds of distortions have to gradually be eliminated over time and therefore we will get to a point where all similar businesses are taxed at similar rates.

Mr Silipo: Thanks very much for being here. A couple of questions, if we have time. One is on the point about the 2.5% cap. You say in your brief that in your view, municipalities should be required to set these caps on all properties. I'm assuming you're talking there about residential.

Ms Andrew: No, not residential.

Mr Silipo: You're just talking about businesses?

Ms Andrew: Yes. Our eventual goal is to have a property be a property, whether it's residential, commercial-industrial. If you have a fair assessment system, it should attract tax based on that property value, not at some incredible multiple of that.

Mr Silipo: That's why I was just trying to clarify whether you are supporting the notion that if there's going to be a 2.5% cap, that should also be there on the residential side as well as on the business side, or are you not?

Ms Andrew: No, we're not. We understand that homeowners who are facing increases do need transition and there are phase-ins for those, but to actually cap it when at the root of the problem of the high tax burden in municipalities is the fact that the people who are enjoying the services are not paying for them, you're not going to get any accountability unless you eventually move to a system where the residents who are enjoying the services are actually footing the bill for them.

The Chair: Thank you very much, Ms Andrews and Mr Mallett, for your time and for your presentation this morning.

Ms Andrew: We appreciate the opportunity.

CITY OF TORONTO

The Chair: The next presentation is from the corporation of the city of Toronto. Mr Adams, good morning.

Mr John Adams: Good morning. I'm John Adams, a councillor with the city of Toronto and chairman of our task force on assessment and tax policy. With me today is Wanda Liczyk, who's the treasurer and chief financial officer of the city of Toronto. I'm here representing the city council, not just speaking for myself today, and we're delighted that there is an opportunity for these public hearings. I believe the clerk is distributing to you some background material which is the record of the motions on these matters that city council has adopted. I just want to highlight a few things.

Way back in the beginning of March, city council asked the minister, Mr Eves, for disclosure of the particulars of the methodology used to assess properties — commercial, residential, the lot — across the city of Toronto. We're still looking forward to receiving that information from the minister's staff.

We also would ask that this committee give consideration in this legislation that the next time we do a reassessment, the preliminary tax study information provided by the assessment people to the municipalities be a public record within the meaning of the Municipal Freedom of Information and Protection and Privacy Act. That was a problem for us over the last few months.

In addition to that, council is on record as saying that it would want to make sure that the legislation and the regulations provide municipalities with the authority to create a separate class for their retail-restaurant, retail-with-residential-above and retail-with-office categories which already exist on the assessment roll. These are the best available proxies for the strip-retail category, which has been subject to so much volatility with the rollout of current value assessment.

We'd also ask that the legislation and regulations provide for internal apportionments to deliver caps on tax

increases due to reassessment in the commercial and industrial categories, with particular emphasis on the shopping centre categories. I believe you had a deputation and representations already today at this committee on the sensitivity of that issue.

Last but not least, we're also asking that the legislation and regulations make provision for a separate class for heritage lands and buildings so we can do a better job of protecting our important heritage stock in the city and across this province.

The other thing I want to say is that I know the city would be keenly interested in continuing to work with the government and the Legislature on real property tax reform so that the costs of education and the costs of social services no longer are an incredible burden to business and residential property taxpayers.

Thank you very much. I'll turn it over to our treasurer.

Ms Wanda Liczyk: Good morning. I think the handout labelled "Small Business and Charities Protection Act" has been distributed. I'd like to go through each of the items in this particular brief. Some of these are from an administrative perspective, so it's very near and dear to my heart in terms of implementing Bill 16, and others are reflective of some of the council's decisions and direction with respect to assessment in its totality, and not particularly limited to Bill 16.

With respect to Bill 16 specifically, the aspect that we would call the limitation of budgetary increases to uncapped classes, it is our observation that this was not originally contemplated during the announcement of the capping of commercial-industrial and multiresidential property classes. The limitation of the phase-in to 2.5% of 1997-level taxes is effectively handcuffing municipalities by requiring budgetary increases to be funded by uncapped classes.

From a financial perspective, and speaking on behalf of the municipality, this is restrictive. I'm most concerned with unforeseen circumstances that may arise to us financially in the year 2000. While I am trying very much to put the books and records of the city in good order, I think there's a sensitivity to the fact that trying today to guess today where we're going to be in the year 2000 is very difficult.

Also, concurrent with the limitation and the restriction on the 2.5% capping, a common theme in many pieces of legislation that have been put by this government, which we quite endorse, is the enhancing of municipal decision-making and autonomy. But not providing municipalities with the ability to determine how budgetary tax increases can be funded is pre-empting municipal autonomy in this matter.

If the restriction is still desirable on the part of the province with respect to capping, it is suggested that the budgetary increases be shared by all classes, based on the proportion of CVA for that class. This is not dissimilar to one of the two options that the board of trade had presented to our task force meeting with respect to changing the tax burdens that exist between different classes of property.

On the issue of the delayed return of the assessment roll, these hearings are causing a delay, which is financially hurting the municipality. We have estimated that it is costing us \$5 million per month for every delay in our due dates. I should point out that some of the former municipalities in the now new city of Toronto had due dates that were June 2 and June 3. Prior to Bill 16, we had been working towards due dates of July 29. Depending on when the roll is actually released, we would have to be looking at August 29 as being the first due date for property tax bills, so we would have a cumulative impact of \$10 million in lost revenue from the delay of passing this bill.

We would like to seek assurance — we have been given the assurance by the government — that there will be funding to offset the loss of interest revenue and/or the cost of our borrowing if we run out of cash over the next couple of months.

Councillor Adams has mentioned a council direction which speaks to the optional classes in section 1 of the bill. We would like to propose very strongly that the bill be amended to include the optional class of small/strip retail. We've done some preliminary work on that particular optional class and see that it has promise for the city of Toronto in terms of alleviating some of the issues for us. As you may be well aware, within the commercial class the valuation of office buildings has been quite problematic and we have been looking at what it would do to take office towers out as a separate class. But we've also been doing analysis on small/strip retail, and at this moment it appears to be the most promising longer-term solution for the city of Toronto with respect to phasing in CVA on a much more balanced basis.

1140

The bill speaks as well to the issue of charities and similar organizations. While we commend the fact that with the capping option, the charitable and similar organizations are being taken care of, it still leaves very much an administrative nightmare for how we would administer a program for charitable and similar organizations if a municipality does not choose the capping option. We are proposing that a new approach be looked at. We would want to work with the province in terms of coming up with a longer-term solution on how charitable and similar organizations are defined, as well as how we could implement this as administratively efficiently as we can.

An alternative we would suggest is that a subclass for charities or similar organizations be defined and that we be given the flexibility to attach a separate tax rate that would reflect a fixing for the charitable and similar organizations. This is not dissimilar to what exists in the legislation for vacant commercial. It would be of the same nature for charitable and similar organizations.

With respect to the administration aspect of Bill 16 with respect to assessment, it is causing us some concern with respect to how we are going to be taking care of the old 1997 assessment roll. We have been given an understanding that we as municipalities will have to be the ones who update the 1997 assessment roll. It would be our

suggestion that if municipalities opt for the capping provision, we should not be expected to take on the responsibility for role maintenance and updating, because we don't have that expertise; we have not been in the assessment business as municipalities. We would recommend that the province continue to maintain and update assessment records pertaining to the identification of tenants in commercial and industrial properties so that it would ease the administration of the capping option for commercial and industrial.

There is another section of the bill that requires municipalities to provide the owner of a property with the listing showing business taxes levied. We would request that the bill be amended so that it be on an optional basis that this listing is provided, again just in the interests of administrative efficiency.

With respect to charitable organizations, the payment of the rebates is a bit problematic with respect to cash flow for the municipality. We would request that the rebates should be paid to charities in the month following the last instalment date for each tax bill, both the interim and the final bill, and that municipalities should not have to fund the rebates prior to receiving the tax payments on the rebates. Particularly for 1999, we would have to advance to charitable organizations before we've even gotten the funds from the previous BOT.

With respect to other related concerns that we'd like to bring to the attention of the committee, Councillor Adams has mentioned —

The Chair: Ms Liczyk, you have about three and a half minutes to go.

Ms Liczyk: Shall I talk slower or faster?

Mr Gerretsen: You'd better talk slower.

Ms Liczyk: With respect to the Ontario Property Assessment Corp, there has been much concern from our council about the quality and accuracy of the assessments. We would strongly request that there should be some independent quality review of the 1996 values and methodology as part of the mandate of the new assessment corporation. Particularly, we as the city of Toronto will be paying about \$25 million for the operation and function of OPAC and we do not have a direct representation on the board. We would strongly suggest that the city have some presence on the board.

With respect to commercial properties, we would also like to put before the committee the issue of a longer averaging process for commercial and industrial properties. A three-year averaging, which is where we will ultimately get to in the next eight years, we do not feel represents the business cycle that exists within the city of Toronto. We would request that a longer averaging period be implemented to smooth the impacts of CVA for our commercial and industrial properties.

A piece of legislation that also touches the assessment family is the Tenant Protection Act. We will be forwarding to the province some recommendations from the task force, which council will be debating today, with respect to the notification of tenants of reductions to property taxes resulting from the implementation of CVA.

With respect to heads-and-beds legislation or taxation of public hospitals, universities and colleges, the city of Toronto council has requested the province to change the legislation so that those institutions pay their fair share of property tax dollars to the municipality.

Finally, council has been very concerned about the seniors and disabled property taxpayers across Toronto. We are looking at recommending and requesting the province to provide a tax deferral program that is broader than assessment-related tax increases and would respectfully request that the Ontario administer such a program as the province of British Columbia does.

The Chair: Thank you very much. You've exhausted the time we've allotted, but I thank you for your presentation and I thank you for your attendance this morning.

ONTARIO SPECIALTY TENANT TAX COALITION

The Chair: The next presentation is from the Ontario Specialty Tenant Tax Coalition.

Mr Michael Sherman: My name is Michael Sherman and I'm representing the Ontario Specialty Tenant Tax Coalition. I'm here to introduce our issue. Phil Gillin will then talk about some of the realities of retail. John Barnoski, from Woolworth, will talk about specific details of the impact of a particular section of the bill, subsection 447.24(4). Finally, Larry Derocher, also from Woolworth, will conclude.

We've distributed a handout to you. Briefly, the OSTTC represents 41 major tenants in malls, representing about 3,400 stores in Ontario. These are specialty stores, small retailers or CRUs. We employ over 30,000 people in total. We support the passage of Bill 16. In particular, I want to talk about one issue, which is that subsection 447.24(4), which protects small retailers.

To give you a little background on the issue, this issue came about in terms of the allocation of property tax among different tenants in a mall. Under the old Assessment Act, it was done on the basis of a mix of cost and per-square-footage. You'd decide how those were allocated, but the act did use the term that it should be allocated under "fair market rent."

The government put that aside — successive governments did — because it wouldn't be fair. Why? Because typically the rents of large anchor stores, such as the Bay, Eaton's, Wal-Mart, are about 10 times lower than specialty stores because there are so few of those anchor stores and because they take up much more square footage they might pay between \$3 and \$4 a square foot. We typically pay, in large malls, between \$30 and \$40 a square foot. So you had an anomaly where these small businesses were paying much higher rents per square foot and, on top of that, much higher property taxes per square foot.

That Assessment Act was challenged by one of the large anchor stores and because the "fair market rent" was in there, the last government, the NDP government, had to then send out tax bills to each of the retailers and we

found that our tax bills were, in some cases, going up 600%, 700%.

All hell broke loose with retailers. We found that all our profit was eliminated, what little was there, and we also found that we were working for nothing, so we protested. To the credit of the previous government, I think the last law that was passed by that government was a Band-Aid solution, which was put into place to help small retailers. It was supported by the Liberal Party — I think the former critic is sitting here, who helped small business, and we appreciate that support — and also the Conservative Party supported that, and it was passed.

But there was one catch to that: under that law, when there was a reassessment or a new act was brought in, it would disappear. That Band-Aid solution has been ripped off and we're exposed. Small businesses want to put across the position that that particular section should be kept in. If that section does not remain in this bill in its present form, our taxes will go sky-high.

1150

Just to summarize, if there's one thing we want to communicate to you, it is that that section, which looks through leases — although leases have been entered into by the anchor stores to protect their position, those leases push all the property tax on to the small retailers. Although we believe in the sanctity of contracts as much as anyone, not since the contract with Shylock which said he was entitled to a pound of flesh has there been a contract that so badly needs eliminating.

I'm going to pass now to my associate, Phil Gillin, who will tell you a little bit more about why this is so important.

Mr Phil Gillin: You've heard a lot from the various people who have been in front of you this morning about retail and the impacts of these tax changes on retail. We can't stress too much just how competitive retailing is these days. Our margins are being squeezed. There is no inflation on retail pricing anywhere at all. Last year, the true inflation on women's soft goods was less than 1%. Everybody is on sale all the time so margins are being squeezed, and it's a very, very difficult environment in which to eke out a living.

I think there's an illusion out there that the shopping centre environment is wildly profitable for the people in those shopping centres. That may have been the case many years ago, but it is no longer the case. The costs of being in a shopping centre are very significant. The small retailers, not the major tenants, pay the costs of the common areas. They carry the taxes on the common areas, on the fountains, the Santa Clauses, the petting zoos and all the stuff that goes on in a mall, and that's very expensive. It is very difficult to make a lot of money in a mall environment these days.

When the current market value assessment first came out, at Yorkdale, for example, the realty taxes were going to go up by almost 300%. For a 4,000-foot store, that meant the taxes were going up by \$150,000. That was why the Ontario Specialty Tenant Tax Coalition was formed, to communicate to government that we cannot

withstand increases of that magnitude and still run our businesses.

The consequences of tax increases of that magnitude will be store closures, store closures from small tenants as well as large tenants like Dylex, the company I work for. We take a very clear-cut view of store analysis. If a store makes money we run it; if it loses money it closes. When the store closes, jobs are lost and that's the fact of retailing today. We can no longer carry and subsidize stores that don't make money for us.

We come to you today to just explain to you that we cannot withstand tax increases of the order of magnitudes that were suggested. We must have the protections inherent in Bill 16. Any threat to the 2.5%-cap element of that bill is a fundamental threat to the viability of retailing in Ontario. We look to you to continue to protect us and give us the benefit of that aspect of the legislation because it's key to us moving forward.

Mr John Barnoski: Good morning — close to afternoon. My name is John Barnoski and I'm a member of this coalition as well.

Our main concern when the original 2.5% solution was put forward, which we thought was a very good idea as an option to municipalities, was the fact that internal shifts within a shopping centre and within a strip plaza were still going to occur, and the same type of situation as the so-called mall wars in Toronto — the previous NDP government introduced some legislation related to that to protect us — was going to happen.

If you look at page 3 of our submission, the Scarborough Town Centre model, you can see a model of tax shifts even if the 2.5% solution as originally structured is to go in place, with no protection for the individual tenants. I can tell you, all the members, that it is not the big owners and the pension funds and the big landlords of the world who pay these taxes; it is their tenants, and the tenants were not protected from the internal shifts. We approached this government on this issue. They understood that this was not only an issue for shopping centres and strip plazas, but an issue for any multi-tenanted property situations, where you previously would have a bank at a higher business rate of 75% and a smaller business at a lower business rate. You would need to give the ability to protect these internal shifts.

Specifically in the Scarborough Town model, you can see that even if there was a 2.5% cap on the total increase to that shopping centre, within that shopping centre the CRUs, the retailers in the middle between these anchor tenants, would still see increases ranging from 38% to 110%.

The government has responded to this significant issue. The government has said that the 2.5% proposed solution, which is an option to municipalities, will be applicable to the actual taxpayers and that there will be no shenanigans along those lines. That is why this legislation is key for us. We commend the government for introducing such well-thought-through legislation.

I'll turn it over now to Larry Derocher, another member of our coalition.

Mr Larry Derocher: Thanks for letting us make our case here today. My job is to just quickly sum up for you what my colleagues have said.

We want to start off by saying that our coalition basically supports the legislation and its objective of creating a uniform, equitable, predictable tax system, but our problem is that without the section of the legislation that provides the option of the 2.5% cap on a tenant-by-tenant basis, we seriously believe that the viability of shopping centre retailing in total is threatened.

There are a couple of factors here. One is the increase in taxes in total to the shopping centre as an entity, and the second is the allocation within the shopping centres based on whether you're an anchor or a CRU tenant. Without the 2.5% cap, individual retailers in the CRU area are going to face increases of 100%, 150%, 200% and more. The message that's gone out and has been heard by independent businesses in shopping centres is that that 2.5% cap is going to apply to them on an individual basis. That's what they've heard. If that doesn't happen, we're predicting that you're going to face a revolt from shopping centre tenants. That revolt is going to be followed very closely by the closing of businesses and job layoffs, and I don't think any of us want that to happen.

Our goal is to provide input to you to help you draft legislation that will keep our sector viable and allow it to continue to contribute to the economy. We have two basic recommendations.

First, we are recommending that Bill 16 be passed, and for municipalities where current value assessment will result in significant tax increases to shopping centres, allow us an adequate transition period. We're prepared to work with you. We want to work with you over a period of time to help you modify the legislation further so that it eventually ends up being as close to perfect as it can be.

The second recommendation is that the clause in Bill 16 that imposes the 2.5% cap on a tenant-by-tenant basis is literally critical to our survival in the future.

With that, we will close and we'll open it up to questions for you.

Mr Barnoski: Let me just add one last point. Some of the municipal associations and municipalities today have made a point that sending out these frozen assessment rolls, if they were to adopt this option, might be somewhat onerous. Well, if this didn't go through and didn't happen, we would see uncontrollable increases. This is the type of thing that protects the tenants within these shopping centres, by saying, "Here's what the previous assessment roll was and here's what the previous tax bill was." While we certainly do not want to see a big problem for municipalities, this is literally critical to our existence. This part of the legislation wasn't just thrown in there; there is a reason behind it. It's critical and we need that to be in place.

The Chair: We have approximately one minute per caucus.

Mr Silipo: Thanks very much for being here. I want to be very clear about something. The one comment I have trouble accepting is that this is well-thought-out legis-

lation, given what everybody else has told us, but from there on in, I want to say to you very clearly that we certainly support the notion that the 2.5% cap should apply on a tenant-by-tenant basis, to use your phrase. Our point all along has been that this protection could also and should also apply more broadly than that, and also, that this legislation could have passed and been done by now if that's what the government had wanted to do, with the proper process, which would have made the legislation much stronger and much better than it actually is.

It's unfortunate that we're here at this late time, causing all the problems there are, but I just wanted to be clear. I almost took from what you were saying that you were under the impression that some were hesitating about whether that 2.5% cap should be there. Certainly we support that. We just think it should also apply to others.

Mr E.J. Douglas Rollins (Quinte): Thanks for your presentation today. Do you people feel that there are many municipalities that won't opt for the opportunity to cap at 2.5%?

Mr Gillin: Based on some conversations with one of the municipal associations, the name of which escapes me at the moment, the information they gave me is that the only municipality that was planning to adopt the cap at this point was Toronto, that all the other municipalities in the province weren't touching it with a barge pole.

Mr Sherman: We have not yet had an opportunity to speak personally with many of those different municipalities, but because this is so important to our survival, one of the things that specialty stores should do is speak to some of those municipalities and communicate to them how important it is for us. Specialty stores are independent by nature. We have our businesses to run, but there are certain things that are so important to us that we have to dedicate the time it takes.

Mr Phillips: I smiled at "well-thought-out legislation." This is called the Danforth legislation; it was sort of made up on a trip out to the Danforth by the minister.

My question is a follow-up on a previous one. On the assumption that many municipalities will not implement the 2.5%, does the bill provide, in your mind, adequate protection for your tenants and jurisdictions where that doesn't happen?

Mr Derocher: Without that clause, no.

Mr Phillips: Without which clause?

Mr Derocher: Without the option to cap at 2.5% on a tenant-by-tenant basis, we have severe problems. We have to get over the first hurdle, then we will start with the municipalities on an individual basis, but without that initial step we're dead in the water.

Mr Phillips: This is absurd for us to be trying to deal with something this important for you in this time, but I'm telling you — at least my belief is that many municipalities, if not most, will not have the 2.5% cap. That's a reality you'll deal with in most communities. That won't happen. Is there protection for you in here?

Interjection.

Mr Phillips: So that doesn't exist. If the bill passes as is, you've got big problems in communities where the 2.5% cap isn't adopted.

Mr Barnoski: I guess the protection we have is the ability as constituents, as taxpayers, to inform the municipality that these are the critical issues to us, and I guess others will say, "These are the critical issues to us," and the option that's taken will be whatever the municipality deems appropriate. But yes, it's obviously very critical to us. There will be substantial increases to us if this is not taken. We must have confidence in the municipalities to understand the issue and make an informed decision.

Mr Gillin: We'd like you to introduce an amendment about the 2.5% cap.

Mr Phillips: Well, I've got two hours.

The Chair: Thank you very much, gentlemen. Our time has elapsed. We appreciate your attendance, and thank you for your submission.

Mr Silipo: On a point of order, Chair: Could I seek some clarification from you and/or the clerk? Given the 2 o'clock deadline for the filing of amendments, is the clerk going to be able to circulate those amendments to our offices prior to the committee resuming?

The Chair: That was the agreement when we took the time of 2 o'clock. That was very harsh treatment of the staff, but we were in consultation with the staff when we selected the time. Can you still live with that?

Clerk of the Committee (Ms Tonia Grannum): Yes.

The Chair: Excellent. Thank you. We'll recess until 3:30.

The committee recessed from 1204 to 1531.

The Chair: Can we get started? Pursuant to the direction of the Legislature, we are to commence at 3:30 with the clause-by-clause analysis of the bill until 4:30, at which time we'll proceed to call the other matters that have not been dealt with.

We have a government amendment to section 1.

Mr Baird: I move that clause 2(3.2)(a) of the Assessment Act, as set out in section 1 of the bill, be struck out and the following substituted:

"(a) for 1998, the day that is 30 days after the assessment roll is returned or such later deadline as the minister may order for the municipality either before or after the earlier deadline has passed; or."

Mr Phillips: Could we get an explanation or reason for this?

Mr Baird: I'll just give a brief one and then if there's anything further that the legal team from the Ministry of Finance has to add, I'll let them do so. This extends the power by ministerial order to give the municipalities an additional 30 days when they're phasing in the four new categories of shopping centres, parking lot and vacant land, office towers and large industrial, so it just gives them 30 more days. I don't know if you have anything extra.

Mr Gerald Sholtack: That's covered in the next motion, the details of what that order can encompass.

Mr Baird: If they want to choose optional classes, this just gives them an extra 30 days to make that decision.

Mr Silipo: Could I just ask the parliamentary assistant why, given that they're making some movement on this, which I think is better than none, they wouldn't have gone for the suggestion that I believe AMO has made — I think it was AMO — which was to make the 30 days, if they want to stick to the 30 days, start clicking after the time at which the full impact of the new assessment is known?

Mr Baird: I think on this issue it's with respect to allowing them to choose the four categories, not when the tax bill is sent out. This would obviously precede that.

Mr Sholtack: The 30 days starts when the roll is returned. When we have the information on the impacts of the classes, they'll have that with the roll return.

Mr Silipo: That's not what we were hearing this morning, though. They were telling us that in fact they won't know the impact.

Mr Sholtack: I think they may have been referring to the Ministry of Municipal Affairs' computer program that provides for calculations.

Mr Scott Gray: It's our understanding now that that program is going to be available at the time the roll is returned. There was a concern earlier that that program wouldn't be available till after the roll was returned. At this point in time, it would appear that that program will be ready when it's returned.

Mr Sholtack: So they will have that tool in order to analyse it, but just to be safe, after the 30-day period, a municipality can ask for a further 30 days, if they feel they need a little more time.

Mr Silipo: That's what's covered in the next amendment?

Mr Sholtack: That's right. That gives the details of what that order can encompass.

Mr Phillips: The clerks and treasurers did propose that it be 30 days after the OPTA, which is the online property tax analysis, is available. Knowing the problems we've had with computers around here, I wonder why you wouldn't have put that in. If the computer's operational, fine, it's 30 days after. If they get it right then, why would we not have accommodated the clerks and treasurers?

Mr Sholtack: I think from a drafting point of view it's difficult to tag your time limit to a computer program. We do have a 30-day period, and I think the Ministry of Municipal Affairs is fairly confident that it will be ready so that 30 days after roll return would be sufficient time, and if that isn't sufficient time, then another 30 days can be provided. This is more definite.

Mr Gray: Certainly defining when the program is ready — I mean, you can work on a program forever. People would argue about what is ready, and we need some kind of certainty. In terms of operationalizing this program, my understanding is that essentially it will be ready to go in a very few days, certainly by the time the roll is returned.

Mr Phillips: Help me with my confidence then. Were the assessment rolls ready to go out last Thursday and they were held up just because the bill wasn't passed?

Mr Sholtack: Yes. The rolls couldn't be returned until the legislation received royal assent.

Mr Phillips: Why was that? Again, the reason I ask is to provide some comfort that these things are ready to go. What part of the bill said that the assessment rolls couldn't be —

Mr Sholtack: One provision in the bill allows for optional classes created out of commercial and industrial, and those would be noted on the assessment roll so that the legislation that authorizes the creation of subclasses, which will be set out in regulations under the Assessment Act which will be filed after royal assent, would authorize matters that are contained in the assessment rolls and, therefore, the full authority to return those rolls needed to await royal assent of Bill 16, plus the filing of regulations under the Assessment Act.

Mr Hardeman: Just for clarification: As the questions come forward, I get somewhat confused. In fact, this amendment creates the ability of the minister to extend the time; this does not set a time line. Is that correct?

Mr Sholtack: This allows a municipality to request a further 30 days to consider whether to adopt —

Mr Hardeman: As was presented this morning by the clerks and treasurers, there may be some difficulty in meeting the time line in the legislation, and this amendment will allow the extension of that time line to meet the needs of the municipalities.

Mr Sholtack: That's right.

Mr Monte Kwinter (Wilson Heights): On a drafting point, could you just clarify for me? There seems to be a contradiction. The amendment to the amendment says, "for 1998, the day that is 30 days after the assessment roll is returned or such later deadline as the minister may order for the municipality either before or after the earlier deadline has passed." How can it be earlier if it says 30 days and the earlier one was 30 days? I can see it being after, but I can't see how you can do it earlier.

Mr Sholtack: The order could be made before the 30 days expires or it could be made after the 30 days expires. The earlier deadline refers to the 30 days because there could be a later deadline which is 30 days after the 30 days.

1540

Mr Gray: If they don't select their optional class within 30 days, and on the 35th day they come to the minister, the minister has authority to extend that for another 30 days even though the original 30 days has already expired. In the absence of that provision there's certainly a reasonable argument that 30 days having expired you're not extending the 30 days any more, because the authority is to extend it has already expired. There's no authority to extend for any further period of time. This is just to be sure. If people said, "Oh my God, we waited until the 32nd day," they can apply to the minister and the minister can extend, essentially, retroactively to the end of the original 30-day period.

Mr Kwinter: I have no problem with that. I still don't quite understand when you talk about the earlier date. It says it should be 30 days. You're saying it can go earlier than the 30 days.

Mr Sholtack: The later deadline is 60 days. That's the later deadline, and the earlier deadline is 30 days. You've got to make a distinction between two deadlines in the provision. When the legislation refers to the earlier deadline, it means the day that is 30 days after the assessment roll is returned. When they refer to such later deadline, it would be covered in the second amendment, a day that is 60 days after the assessment roll is returned.

The Chair: Any other questions? Are you ready for the question? Clause 2(3.2)(a), the amendment, all those in favour? Contrary, if any? Carried.

The next amendment, to subsection 2(3.3) of the Assessment Act, is a government amendment.

Mr Baird: I move that section 1 of the bill be amended by adding the following as a subsection of section 2 of the Assessment Act:

"Orders extending deadline

"(3.3) The following apply with respect to an order referred to in clause (3.2)(a):

"1. The order may be made only upon the request of the municipality to which the order relates.

"2. The order may not provide for a deadline that is later than the day that is 60 days after the assessment roll is returned.

"3. The Regulations Act does not apply with respect to the order."

Mr Phillips: Can we have an explanation of what this is attempting to fix?

Mr Baird: This is complementary to the first amendment that we just presented. It gives the details on how a municipality would go about getting the extension, that you have to request it. It just sets that out how one would seek the minister's authority to give a 30-day extension, the process on how a municipality implements the first amendment that was just carried.

Mr Silipo: Would I be correct in saying that if you didn't have this amendment, then on the basis of the amendment that we've just passed the minister would be able to order, upon a request by the municipality, a further deadline and that deadline would not be prescribed other than by whatever the minister in his wisdom decided? In other words, the 60 days could even be longer, couldn't it?

Mr Sholtack: It could be, yes.

Mr Silipo: If we put in the second amendment, it limits the flexibility to 60 days.

Mr Sholtack: That's correct.

Mr Silipo: I would just ask the parliamentary assistant why he wouldn't leave it open-ended in case you have a situation there that requires you to deal with a period of time longer than 60 days. You bind yourself into the 60-day period.

Mr Baird: If you want to use the optional new four classes, that means you've got to make a decision in terms of picking out your own assessment and financial information. You've got to make a decision soon. There is a degree of flexibility to allow municipalities to deal with that, but you do have to make a decision.

Mr Sholtack: They can't send their tax bills out until they decide whether they're going to adopt an optional

class. Then there has to be a transition ratio prescribed for that optional class so that they can calculate their taxes.

Mr Baird: This would be a backdoor way. If they've already sent their tax bills out, they could raise more money.

Mr Gray: There is a statutory deadline for them concerning the tax ratios. These optional classes have to be selected before the tax ratios.

Mr Hardeman: Does this amendment mean that when the application came in after the 30 days, the minister could no longer grant the 30-day extension?

Mr Sholtack: No —

Mr Hardeman: He would grant the length of extension: 30 days minus the days that they were over the first 30?

Mr Sholtack: If the request was made 35 days after the assessment roll was returned, the minister would have the authority in the first amendment to extend it to 60 days. It would be another 25 days that the municipality had to make their decision.

Mr Hardeman: It limits it to a 60-day extension.

Mr Sholtack: Sixty days in total. That's right.

The Chair: Any other? Ready for the question? All those in favour? Contrary, if any? Carried.

The next amendment also concerns subsection 2(3.3) of the Assessment Act, an NDP motion.

Mr Silipo: I move that section 1 of the bill be amended by adding the following as a subsection of section 2 of the Assessment Act:

"Certain classes required as municipal option classes

"(3.3) The minister shall prescribe the following as classes of real property that apply only if a municipality opts to have them apply as allowed under subsection (3.1):

"1. The retail strip small business property class.

"2. The heritage building property class."

If I may speak to it briefly, this would add a couple of classes that we know have been requested certainly by the municipality of Toronto, but perhaps by others as well, in terms of suggesting that in the classes that should be set up when the municipality makes the decision whether to opt into this thing or not, there should be a separate class dealing with retail strip small business property class and, as well, the heritage building property class, which I know is a particular concern in the city of Toronto. It may not be in other places, but it is here.

Having the ability to create these classes would allow the city to single these classes out for special protection, particularly with respect to the heritage building class and the retail strip classes we heard a lot about this morning. We're not quite sure why, particularly on the retail strip, that wasn't included as a list of optional classes. But our sense is that it may not even be set out as a separate class in the regs that will follow this, unless the parliamentary assistant has information to the contrary. We think it should be right in the legislation.

Mr Baird: I assume this is one of the issues that arose from the presentation by Councillor Adams from the city of Toronto. Looking at it and considering it, I don't know if I'd have a serious objection. At the same time, I do have

a concern with respect to including it in now, wondering whether there's enough time to make such changes and get the assessment rolls out. The heritage and the small strip retail are difficult to identify on the rolls. It potentially could take months to be able to identify them with a significant degree of accuracy, which would delay the tax bills going out.

There is a concern that has been expressed by AMO and by members of the committee with respect to the loss of revenues for municipalities if it were to be delayed further. It's not something which I would say I personally was against, but I would want to consider it. I do have that concern with respect to making the change at this time, because it would just further delay the rolls, because it is very difficult to identify in the rolls.

Mr Phillips: Although I think the way the motion's worded is that this decision is left to the municipality if it believes it can accommodate that. This is enabling legislation.

Mr Sholtack: The regulation would have to identify the content on the assessment roll so that the municipality could see the impact, just like we will identify the content of the office building, the shopping centre, the other optional classes that are going to be made. We found, over the last little while, trying to identify what constitutes a retail strip small business is very difficult from a drafting point of view. You have a whole myriad of different kinds of properties that might be included. The option to use the tiering was the recommended approach to deal with small properties. By tiering commercial assessments you can target tax relief to smaller properties which tend to be the strip retail properties. In our view, using tiering is the best way to provide tax relief to small retail properties.

1550

Mr Phillips: I have heard a lot of support for the small retail strip from many government members. It seems to me that if we don't provide this option now, it's gone. If we do, municipalities can weigh the complexities of it and make their own decisions. They'll understand if it does delay some things. I just wonder why we wouldn't make this part of the bill.

Mr Silipo: Without belabouring the point, this has been, as Mr Phillips has just said, one of the things that the minister and others have said they wanted, to make sure that small businesses were protected. Yet, ironically, nowhere in the classes that they have set out have they provided for a particular small retail strip class to be there among the categories.

The other thing is that there are also the small businesses in the malls which aren't picked up anywhere as far as I can tell. Even though, as we heard this morning, many of them may be chains, there are also a number of individual ones that are not covered anywhere. This at least would provide some ability with which to cover them as well.

Mr Hardeman: A question to the ministry: If those two classes were added as optional classes, would it require a change in the assessment roll if municipalities decided to pick up on the option and implement it? Then

they would have to go back through the assessment process and create those classes in the assessment before they could avail themselves of it.

Mr Sholtack: That's right. The assessment roll has to identify all classes of real property, so just as in the other optional classes, they would have to be reassessed and assessment notices sent would have to be out.

Mr Hardeman: The other question is to the mover of the amendment. I have a concern as to how you would identify the heritage building class, whether that would be a building with any heritage attributes regardless of what is in it, or is it a strictly designated historical building of historical significance?

Mr Silipo: Chair, I don't profess to be an expert in this, but I think there are municipalities, certainly the city of Toronto, but beyond, that have a lot of experience in this. So my sense is that while I don't claim it would be easy, I don't think it's a particularly onerous process to determine, on the basis of provincial legislation and practice that's been used municipality by municipality, what the criteria should be in terms of what would fit into that category.

Mr Hardeman: On the same one: In the opinion of the mover of the amendment, is there a difference between a small business property class and a retail strip small business property class? Is it significant that they're in a strip as opposed to being a small business class?

Mr Silipo: Not per se, except that the point has been made that many of the small businesses are found in the retail strips and that warrants a particular kind of protection because of the nature of the business they have and the nature of the community that builds up around that business.

Mr Baird: Would that cover — you mentioned shopping centres.

Mr Silipo: No, I stand corrected on that. It probably would not pick up those if it's seen that way.

The Chair: Any other questions? No? Ready for the question?

Amendment 3: All those in favour? Contrary, if any? That's lost.

Shall section 1, as amended, carry? All those in favour? Contrary? Carried.

Section 2: No amendments to section 2. Shall section 2 carry? All those in favour? Carried.

Section 3: Shall section 3 carry? All those in favour? Carried.

Section 4, amendment number 4, subsection 23(9) of the Assessment Act; Mr Baird.

Mr Baird: I move that subsection 23(9) of the Assessment Act, as set out in section 4 of the bill, be struck out and the following substituted:

"Update of old fixed assessment

"(9) A fixed assessment is changed each year after the year with respect to which it first applies in accordance with the following:

"Fixed assessment (current year) equals previous year's taxes over current year's tax rate times tax change (class);

"Where,

"'Previous year's taxes' means the taxes levied for municipal and school purposes in the previous year on the land to which the fixed assessment relates;

"'Current year's tax rate' means the total tax rate, for municipal and school purposes for the current year, for property in the residential/farm property class in the local municipality;

"'Tax change (class)' means an amount determined in accordance with the following:

"1. Determine the total taxes levied for municipal and school purposes in the previous year on the property described in paragraph 4.

"2. Determine the total taxes levied for municipal and school purposes in the current year on the property described in paragraph 4.

"3. The tax change (class) is the amount determined under paragraph 2 divided by the amount determined under paragraph 1.

"4. The property referred to in paragraphs 1 and 2 is the property in the local municipality that, for both the previous year and the current year, is in the residential/farm property class. For 1998, the property referred to in paragraphs 1 and 2 is the property in the local municipality that, for 1998, is in the residential/farm property class."

Mr Kwinter: I'd like to get a clarification from the parliamentary assistant. In the original drafting of this bill, the whole equation is based on assessments. It says: "Fixed assessment...equals assessment (current year) over assessment (previous year) times fixed assessment..." You've now changed the whole concept to previous taxes. So what happens is that if I pay my taxes and in the interim I get reassessed, there's no provision in that formula dealing with assessments. It all has to do with taxes. What you're saying is that it depends on what taxes you paid before and we will have this formula to determine what taxes you're going to pay now, as opposed to assessment, which was the original drafting of the bill. I just would like to know the rationale behind that.

Mr Baird: It deals with tax change. Maybe the official could shed some light on the specific nature of your question.

Mr Sholtack: The concept of the fixed assessment is contained in section 23 of the Assessment Act. It allows a municipality and a golf course to enter in an agreement that would fix the assessment for as long as the golf course wishes to have it fixed. Once it's fixed, it cannot change under the legislation, so the tax rate is applied to the fixed assessment and the taxes are paid by the golf course. The intent of the original provision had been that where the assessments are updated so that they're increased significantly, the result is that the tax rate goes down. So if there's no alteration to the fixed assessment, the golf course ends up paying very little tax, so there's a significant drop in the total tax paid by the golf course unless the fixed assessment is modified to reflect the new assessments that are being returned in 1998.

The intent had always been that the golf course should not pay any less tax in 1998 than they paid in 1997, and that required a change to the fixed assessment. The formula that was used based on assessment wouldn't work in the circumstances. It wouldn't truly reflect the guarantee that the taxes wouldn't change, so we've now corrected that and are proposing that they be based on the actual taxes. There's a provision that if the overall level of taxes goes up or down, that would modify the taxes paid by the golf course. These are only those golf courses that have fixed assessments, that have an agreement with the municipality to fix their assessments.

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Mr Baird: In layman's language, that just maintains the existing contractual relationships between the municipality and the particular operator. The municipality has entered into these agreements and basically maintains the status quo. That was the intent of the first and second reading draft and that just seeks to clarify it. If a municipality has signed a particular agreement, then this just maintains that status quo.

Mr Kwinter: I have a problem with the concept that the taxes must keep going up. An assessment is an assessment. The whole idea behind current value, actual value assessment is, what is it worth? What happens if the golf course for whatever reason isn't worth what its fixed assessment is, then what do you do?

Mr Baird: The operator went into a contractual relationship with the municipality. Obviously it's not in their interest to do that and they wouldn't — I'd be hard-pressed to think of a situation where that would —

Mr Sholtack: The fixed assessment is not intended to reflect the actual assessment of the golf course. It's designed to preserve green space in the municipality. So the amount of the actual taxes is being calculated under the provisions of section 23, and when the golf course is sold or when they go out of the agreement, they'll have to repay all the taxes they've been deferring for the duration of the fixed assessment.

Mr Phillips: This is fascinating: We got these amendments an hour and a half ago and this is the golf course amendment, I gather, hidden under the term "fixed assessment." Just one more question: Are there any other things besides golf courses on fixed assessments?

Mr Sholtack: No.

Mr Phillips: So it's the golf course amendment. Is the impact of this that golf courses will pay more taxes than the previous one or less taxes? I don't think we had any presentations in our little public hearings this morning on the golf courses, but what is the intent, that they're going to pay more or less taxes here than under the part you're amending?

Mr Sholtack: They'll pay the same taxes. The intent is that they pay the same taxes in 1998 as they paid in 1997. This formula will modify the fixed assessment to reflect the fact that all assessments in the municipality have gone up and the older the base, the more significant the change is. In order to get the same amount of money that they got, the municipality would reduce its tax rate to get the taxes.

That's why I said that the fixed assessment has to be modified to reflect the increase in the general level of assessment in the municipality.

Mr Phillips: I'm not sure you answered my question, which was, will they pay more tax or less tax under this amendment than under the original proposal in the bill, not versus 1997?

Mr Sholtack: The result will be that they will pay exactly what they paid last year.

Mr Phillips: I understand that.

Mr Sholtack: The result may be more or it may be less. We found that it varied depending on the circumstances. The assessment carried on the roll in 1997 versus the current value return for 1998 resulted in a great variation in tax consequences for these golf courses and a number of examples resulted in significant tax increases applying this formula, and that was not the intent of the amendment.

Mr Phillips: I'm just trying to get an idea of the story tomorrow in the Star and the Globe. Is it, "Committee Gives Rosedale Golf Course Last-Minute Break" or not? I just don't know.

The Chair: Read it whatever way you want.

Mr Phillips: But surely we're owed some explanation before you want us to vote.

Mr Baird: What anyone will say is that there are no changes, that 1998 will be the same as 1997.

Mr Phillips: That's not the issue.

Mr Baird: That's not your issue.

Mr Phillips: No, that's not the issue. The issue is that we are amending the previous proposal and I just want to know why we're amending the previous one. Did it have consequences that we didn't like, what were those consequences and what exactly is the impact of this?

Mr Baird: The intent was that 1998 would be the same as 1997, that it wouldn't be changed. This seeks to live up to that intent.

Mr Phillips: I never knew that was the intent of the original bill.

Mr Kwinter: Mr Chairman, I have a basic problem with the concept we're dealing with. Basically, the province has the duty to provide a uniform assessment. That is the duty of the province and that's the reason we're into this whole situation with current value, actual value, market value. The municipality under guidelines set out in this legislation has the authority to set the tax rate, and that tax rate is done by the municipality based on their particular requirements.

We now have an act that is going to be amended that is taking the concept of the provincial legislation providing the ability to assess, and we're now saying we're also going to determine the tax by saying we are removing, as it was in the original bill, all reference to assessments other than fixed assessment, and we're now talking about dealing with previous taxes and making sure that taxes remain constant.

I just find that there's a conflict in what we have been doing in every other tax classification. I understand the requirement that this is green space and that there have got

to be some concessions. I just find that we are setting what I think is a very strange precedent. We are suddenly legislating what the taxes are going to be as opposed to what the assessment is going to be.

Mr Baird: But the fixed assessment is not new by this legislation. It has pre-existed for some time.

Mr Kwinter: I'm not talking about assessment. I'm talking about taxes.

Mr Baird: I'll give you an example in my constituency of one operator, whom I think you and your colleagues would know quite well. There was some discussion of expanding that and purchasing — there's some MTO residual land that'll go up for sale at some point in the next five or 10 years and the community there, for example, wants the green space maintained. This is not new with Bill 16. In the past there was a tax recognition of that, because obviously if a municipality or the province has a park, if there's not a separate tax rate for parkland because generally speaking it was in the public sector, I guess over the years this has developed. It's not something that's new or being introduced or changed. It's simply holding what was done in 1997 through to 1998, so it maintains it at the same rate.

Mr Silipo: I find that the more complex these things get, the easier it is to try and come back to basic principles. I'm going to ask the parliamentary assistant this I hope simple, straightforward question: Tell me what you think I should say to one of my constituents staying at the corner of Dufferin and St Clair, who's either a shopkeeper in that situation or a shopper, for whom they're going to see either this 2.5% cap, depending if you get the regs right and protect them, or they may see an increase or a decrease, depending if they're residential. What's going to happen to them? How do I explain to them that in the same piece of legislation you're putting in a provision that ensures that golf courses will not have an increase in taxes?

Mr Baird: I'd say to them a number of things. One is that the operators are going to pay the same in 1998 as they paid in 1997. I'd say to them that this piece of legislation puts a 2.5% cap on. Finally, I'd say that this government is moving to equalize the education taxes for commercial-industrial, and there'll be a \$400-million tax cut to the city of Toronto, that was overpaying for years and was driving businesses out of this province. I would say to them that this government is finally taking some action to ensure some fairness and equity and to ensure that businesses in Toronto aren't whacked to such an extent. I'd say to them one example that Mr Ruprecht made in the House: "Why are all the restaurants on one side of the road on" — I believe it was Steeles Avenue — "and not on the other side?" That's because of the inequitable tax system. We're beginning to clean it up and we're beginning to move to a more fair and equitable tax system.

Mr Silipo: You're welcome to come and try any and all of that, Mr Baird. I was trying to get at why, if I've understood this, you're treating golf courses differently than you're treating other sectors, including — you said a

couple of things in your answer that maybe helps in the situation or maybe not. Are you saying by virtue of this amendment that golf courses will have their taxes frozen at last year's rate? Or are you saying that they will be subject to the potential increases but then be subject to the 2.5% cap? Which of the two is it?

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Mr Baird: I think we're saying that the local municipality that entered into a contractual relationship with an operator, that agreement will stand and they'll pay this year the same taxes they paid last year. That contractual relationship entered into by that local storekeeper's councillor and mayor is going to be respected and maintained. That shopkeeper elected the local council, elected a mayor, and that mayor and council has entered into a contractual arrangement with an operator. We're going to simply maintain that the way it was; we're not going to interfere in that respect.

Mr Silipo: You'd argue that this is a case where you are allowing some semblance of local autonomy for municipalities to make those decisions.

Mr Baird: Yes.

The Chair: Any other comments or questions? Are you ready for the question? All those in favour? Contrary? Carried.

Shall section 4, as amended, carry? All those in favour? Contrary? Carried.

Shall section 5 carry? All in favour? Contrary? Carried.

Section 6, subsection 31(7); a Liberal amendment.

Mr Phillips: The following five amendments all deal with the same issue and you have to deal with them as a package. I'll just explain what it is and then read the amendments. This responds to the concern of the clerks and treasurers —

Mr Hardeman: On a point of order, Chair: I'm reading it and I'm quite prepared to hear the member across read it, but if this is the one that deals with how I should vote, I would suggest that that may be out of order.

The Chair: You might be right; it might be out of order; therefore, you'd want to deal with debate on the item itself. What difference does it make? It's probably out of order, but I'd like to hear the argument.

Mr Baird: He hasn't moved it yet.

The Chair: If it had been after 4:30, it would've been ruled out of order.

Mr Phillips: Of course; everything will be.

Mr Silipo: But since we have a whole hour to debate, why not?

Mr Phillips: Listen, the clerks and treasurers have told you this bill is a mess. I'm trying to be helpful in correcting the damn thing.

The Chair: I know how you feel. I often do the same for the Speaker in the House.

Mr Hardeman: Just tell me how to vote; don't make a resolution to tell me how to vote.

Mr Phillips: You vote however you want to vote. I'm just telling you that if you want to accommodate the clerks and treasurers, you'll have to join with us and vote against section 6, subsection 31(7) of the Assessment Act. If you

don't want to support the clerks and treasurers, do whatever you want.

They point out in their concerns that with the change of "shall" to "may" in subsection 8(1), the delegation of authority is transferred to the assessor. In their opinion, and I think they're probably right, this should only be decided by the Ontario Property Assessment Corp through policies, not left to the assessor to make these decisions. These five recommendations return to the Ontario Property Assessment Corp, with the board made up of AMO, the authority to make these decisions.

I would say that if the committee is supportive of the clerks and treasurers, you would vote against section 6 of the bill. I'll read the motion on subsection 8(1) if you want, Mr Chair. But if you want to deal with them sequentially, you can.

The Chair: I think we'd better deal with them sequentially.

Mr Phillips: Okay. I will repeat what I said, that the bill now puts in the hands of the assessor authority that should, in the minds of the clerks and treasurers and in my mind, be left as a matter of policy to the Ontario Property Assessment Corp.

Mr Hardeman: I'm not sure which amendment is before the committee at the present time, but if it's the one that suggests how we should vote, I would have great difficulty in dealing with that one now and dealing with the items that the member has discussed which would be subsequent to that. If I agreed with him in the first amendment then in fact I couldn't support the other amendments because we'd already voted them down. In process, he has a bit of a problem here with what's before us.

Mr Phillips: Actually, I have no problem at all, because if you vote for subsection 31(7) of the Assessment Act, you can't deal with the rest. You're going to have to make up your mind.

The Chair: Would you mind running that by me again?

Mr Phillips: If you approve section 6 of the bill, subsection 31(7) of the Assessment Act, you cannot accommodate the concern of the clerks and treasurers about turning the authority over to the assessor instead of the assessment corporation.

Mr Baird: I just would speak very briefly to the point. Section 6 of the bill also has a package of stuff that deals with supplementary estimates done in-year and year-end and requires things like a notice to be sent out if a supplementary estimate has been done. So to vote against it would open up a whole host of problems.

Mr Sholtack: If I might add, the amendments that were made in a schedule to Bill 164 that establish the Ontario Property Assessment Corp had complementary amendments that would define "assessor" to mean an employee of the corporation, once the corporation took over the delivery of assessment services. Once that happens, all assessors work for the corporation. The corporation will establish the policies and they will follow them. I just don't understand the concern.

Mr Phillips: Did you discuss this with the clerks and treasurers and are they satisfied?

Mr Sholtack: I don't think we actually discussed that aspect. If that's their concern, it really shouldn't be a concern.

Mr Phillips: Did you ever get a copy of their letter?

Mr Sholtack: We did.

Mr Phillips: Did you look at their concern?

Mr Sholtack: We did.

Mr Phillips: You didn't discuss it with them?

Mr Sholtack: We had a meeting with them, but there were many issues we discussed.

Mr Phillips: You didn't have time to discuss it with them?

Mr Sholtack: That's right. The intention of these provisions is to reflect current practice. Where supplementary assessments may not be made during the year, they may be made at the end of the year. They're very technical amendments to accommodate that; that's all they are.

Mr Phillips: The clerks and treasurers have some conflict.

The Chair: I'll rule the amendment in order and we'll call the question on the amendment.

Interjection.

The Chair: You have trouble with that?

Mr Arnott: It's out of order.

Interjections.

The Chair: It isn't an amendment. I agree. If we rule it out of order, we'll call the vote on section 6, which amounts to the same thing. The question then is, shall section 6 carry? All in favour? Contrary? Section 6 carries.

Shall section 7 carry? All in favour? Carried.

Section 8: subsection 34(1), several amendments.

Mr Phillips: Subsection 8(1) of the bill, subsection 34(1) of the Assessment Act: I move that subsection 8(1) of the bill be struck out, as part of that "shall" issue.

The Chair: Any other further comments? Ready for the question on amendment 6, subsection 34(1)? All those in favour? Contrary? Lost.

Amendment 7, subsection 34(2): Any additional comments?

Mr Phillips: I move that subsection 34(2) of the Assessment Act, as set out in subsection 8(2) of the bill, be amended by striking out "may" in the sixth line and substituting "shall."

Mr Baird: I know from the clerks and treasurers, from their letters and in discussions, that they want supplementary assessments to be done in-year. I guess there's a flexibility desire to do them in-year or end-year. Many municipalities already do end-year and this would take away that flexibility — and obviously with notice that there was a supplementary assessment.

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The Chair: Any further comments? Ready for the question? Subsection 34(2): All those in favour? Contrary? Lost.

Amendment 8. Would you like to read it?

Mr Phillips: I move that subsection 34(2.1) of the Assessment Act, as set out in subsection 8(2) of the bill, be amended by striking out paragraph 2 and by amending paragraph 3 by striking out "Paragraphs 1 and 2" in the first line and substituting "Paragraph 1."

I think we're still on the shall/may issue. I'm sorry, that's not true. My apologies. This is a different issue that the clerks and treasurers raised and it has to do with what is called a change event. I believe that the way the bill is currently written, if there are in-year changes it permits the moving to a higher tax ratio class but not to a lower tax ratio class.

The concerns of the clerks and treasurers, which I share, is, as they say, "a 'change event' stipulated in subsection 8(2) will only have an impact on class changes driving a higher tax rate. If a change event moves a class to a lower rate, there is no option for the assessment corporation to reassess. This will prevent a negative tax bill." But for property taxpayers who should have moved to a lower tax rate, in the opinion of the clerks and treasurers it is going to lead to contentious dealings where it looks like their government is prepared to move them to a higher tax rate but, if justified, is not prepared to move to a lower tax rate.

Mr Baird: On this, under the Municipal Act there's already the ability to make application to go to a lower property class. If you had a building and tore it down and built a parking lot or built something that would significantly change the class, there is the ability to go into city hall — it's called a section 442 application — and to do that already. I think under the Municipal Act there's already the ability to do that. I don't take exception with what you said, that this bill doesn't say it, but under the Municipal Act already, under 442, they can.

Mr Phillips: The clerks and treasurers — actually I'm quoting directly from them: "However, the property tax owner would expect a change and this will ultimately lead to contentious dealings with property owners." This prevents a negative tax bill. Why would they say that and you have a different opinion? Did you discuss that with the clerks and treasurers?

Mr Sholtack: I believe we did go through their submission and we undertook to get them our comments. The comment on that point would be that there is the process, it's been in place for many decades, it has not led to contentious dealings. People can get tax reductions. They do it all the time.

As the parliamentary assistant said, where buildings are torn down, where there are other changes that result in tax refunds, people will apply under 442 and those refunds will be processed. In the same way where property moves from a higher tax class to a lower tax class, it will generate the right to apply for a refund for taxes for the part of the year. That is a routine process that's been in place. I guess we can't understand why that would particularly be contentious in this case.

It's generally not the practice of the assessment department to reduce people's taxes. Their job is to assess in supplementary cases where there's increased revenues.

For example, where properties are improved or where a building is erected, supplementary assessments are issued and, as was stated, when buildings are torn down the process is under 442 to get your taxes back. So that scheme continues with respect to these particular provisions.

Mr Phillips: I didn't quite understand what you're saying, that the role of who is to normally only deal with tax increases and not —

Mr Sholtack: In supplementary assessments they deal with increased liability. Where you improve property, as an example, where property is improved during the year, where a house is erected on a lot, or an apartment building or an office building, the supplementary assessment process results in an added assessment to the property and that generates a tax bill that's sent out by the treasurer of the municipality.

This continues that process. Where there's a classification change that again results in an increased tax liability, the collector will then send out a tax bill. It's not intended to deal with, as you say, negative tax bills. It's intended to deal with situations that do generate increased tax liability.

Mr Baird: A basic analogy is that if someone owes less tax, they're always going to be there to go and collect it. There's no doubt about that.

Mr Phillips: They're on their own.

Mr Baird: It's sort of like a tax refund. Those taxpayers who are owed an income tax refund generally apply significantly earlier to get it. There was a case, for example, that was very celebrated in Ottawa where one landlord actually ripped out all of the windows inside of an apartment building which sat empty in downtown Ottawa for a period of about two years just so that he could get his property tax reassessed. He just simply went down to city hall and just filled out a section 442 application under the Municipal Act and it was immediately reduced. When people have a reduction in property, they generally are pretty quick about seeking that reduction because people are taxed pretty heavily.

Mr Phillips: I'm just going by what the clerks and treasurers say and they were trying to be helpful to people who are owed a tax decrease, but I gather the government doesn't want to do that. They're going to have to find their own way around it, I guess.

The Chair: Any further comment? Ready for the question, amendment 8, 34(2.1)? All in favour? Contrary? Lost.

Subsection 34(4), amendment 9.

Mr Phillips: I move that subsection 34(4) of the Assessment Act, as set out in subsection 8(3) of the bill, be amended by striking out "the appropriate changes shall be made" in the third and fourth lines and substituting "the assessor shall make the appropriate changes."

Again, this is the clerks and treasurers. I do wish we had more time for them to provide some of their own comments on these things as well, but what they are recommending is clarification that it is the assessor who changes the assessment roll. Right now, it's unclear who

makes those changes and in their mind it will create what they call "instant adverse relationships between the council and those taxpayers expecting a reduction."

Mr Baird: I think this is the same issue that we just dealt with two amendments ago with respect to whether it's the corporation or the assessor. I think it's a pretty narrow differentiation. It's clear, I think. Bill 164 set up the corporation, but I appreciate your issue. I don't agree with it, but I appreciate it.

Mr Phillips: Okay.

The Chair: Were you finished, Mr Phillips?

Mr Phillips: Yes.

The Chair: Any other comments with regard to amendment 9, 34(4)? Ready for the question? All those in favour? Contrary, if any? Lost.

Shall section 8 carry? Carried.

Shall section 9 carry? Carried.

By my watch it is now 4:30.

1630

Mr Phillips: Just when we get to the most crucial amendment.

Mr Gilchrist: You should have paced yourself.

The Chair: Section 10, amendment 10, subsection 40(17): On the amendment, all those in favour? Contrary? Defeated.

Interjection.

The Chair: There's no need to read them.

All those in favour of amendment 10, subsection 40(17)? Contrary? Defeated.

Shall section 10 carry? Carried.

Shall section 11 carry? Carried.

Shall section 12 carry? Carried.

Shall section 13 carry? Carried.

Shall section 14 carry? Carried.

Shall section 15 carry? Carried.

Shall section 16 carry? Carried.

Shall section 17 carry? Carried.

Shall section 18 carry? Carried.

Shall section 19 carry? Carried.

Shall section 20 carry? Carried.

Section 21, a Liberal amendment, number 11, reference to subsection 372(1.1). All those in favour? Contrary? Defeated.

Amendment number 12, subsection 21(2.1) of the bill, subsection 372(5). All those in favour? Contrary? Defeated.

Shall section 21 carry? Carried.

Section 22, amendment number 13, reference to subsection 372.1(4).

Mr Phillips: I gather, Chair, that we can't even get an explanation of what these do.

Mr Baird: There was a briefing offered at 8 am this morning.

Mr Silipo: Don't go there again.

The Chair: Excuse me, I think he was directing it to me.

Mr Baird: I'm just trying to be helpful.

The Chair: I know. I now appreciate the Speaker.

Mr Phillips: You wouldn't even present these publicly until 2 o'clock.

The Chair: My answer to your question is, as per the Legislature's direction, no.

Mr Phillips: Does anybody know what we're voting on here?

The Chair: We're voting on amendment 13, section 22 of the bill, subsection 372.1(4) of the act. All those in favour? Contrary? Carried.

Amendment 14, subsection 372.1(5): All those in favour? Contrary? Carried.

Amendment 15, subsection 372.1(6): All those in favour? Contrary? Carried.

Number 16, subsection 372.1(7): All those in favour? Carried.

Amendment 17, subsection 372.1(7.1): All those in favour? Contrary? Defeated.

Amendment 18, reference subsection 372.1(8.1): All those in favour? Contrary? Defeated.

Amendment 19, reference subsection 372.1(9), paragraph 1: All those in favour? Carried.

Number 20, subsection 372.1(9), paragraph 1.1: All those in favour? Contrary? Carried.

Number 21, subsection 372.1(9), paragraphs 6 and 7: All those in favour? Contrary? Carried.

Shall section 22, as amended, carry? Carried.

Shall section 23 carry? Carried.

Shall section 24 carry? Carried.

Shall section 25 carry? Carried.

Shall section 26 carry? Carried.

Section 27, amendment 22, reference to subsection 442.1(3), paragraphs 3 to 6: All those in favour? Contrary? Lost.

Amendment 23, reference to subsection 442.1(4), paragraph 2.1: All those in favour? Contrary? Carried.

Amendment 24, reference to subsection 442.1(4), paragraphs 5 and 6: All those in favour? Contrary? Carried.

Amendment 25, reference to subsection 442.1(4), paragraphs 5 and 6: All those in favour? Contrary? Lost.

Shall section 27, as amended, carry? Carried.

Shall section 28 carry? Carried.

Shall section 29 carry? Carried.

Section 30, amendment 26, reference 447.1, 447.2 and 447.3: All those in favour? Contrary? Defeated.

Amendment number 27, reference 447.1, 447.2 and 447.3. All those in favour? Contrary? Lost.

Number 27A is with reference to subsection 447.3(5). All in favour? Contrary? That's lost.

Number 28 is with reference to subsection 447.3(5). All those in favour? Contrary? Lost.

Amendment 29, subsections 447.3(5) and (6): All those in favour? Contrary? Carried.

Number 30, reference to 447.3.1: All those in favour? Contrary? Lost.

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Number 31 is the Liberal motion with regard to section 447.4.1 directing the expenditure of public funds. It's

being suggested to me that it's out of order in that it's a direction to expend public funds.

Mr Phillips: It's sort of death by hanging or the electric chair.

The Chair: Take your pick. It's out of order.

Mr Rollins: If the power's off, you're in luck.

Mr Phillips: You'll get us one way or the other, I know.

The Chair: The next amendment, number 32, is also out of order for the same reason.

Number 33: This is also out of order for the same reason.

Number 34, with reference to subsection 447.5(1), a Liberal motion: All those in favour? Contrary? Lost.

Number 35, reference to subsection 447.15, an NDP motion: All in favour? Contrary? Lost.

Number 36, number 447.26: All in favour? Contrary? Lost.

Number 37, reference to subsection 447.34: All those in favour? Contrary? Lost.

Shall section 30, as amended, carry? Carried.

Shall section 31 carry? Carried.

Shall section 32 carry? Carried.

Shall section 33 carry? Carried.

Section 34, amendment 38, reference to subsection 257.2.1: All in favour? Contrary? Carried.

Amendment 39, reference to subsection 257.12.1: All in favour? Contrary? Lost.

Amendment 40, reference to subsection 257.12.1: All in favour? Contrary? Lost.

Amendment 41, reference to subsection 257.12.1: All in favour? Contrary? Carried.

Shall section 34, as amended, carry? Carried.

Shall section 35 carry? Carried.

Shall section 36 carry? Carried.

Shall section 37 carry? Carried.

Section 38, amendment 42, reference to subsection 52(15) of the Power Corporation Act: All in favour? Contrary? Carried.

Shall section 38, as amended, carry? Carried.

Shall section 39 carry? Carried.

Shall section 40 carry? Carried.

Mr Silipo: On a point of order, Mr Chair: I was just glancing at this to make sure I had this right. Can I raise a point back on amendment 42, more by way of clarification?

This, as you noted, refers to changes to the Power Corporation Act. As far as I can tell, we have not been provided a copy of that act. Is it in order for a bill to be amended without that having happened?

Mr Baird: It is amending the original bill. It amends the Power Corporation Act.

Mr Silipo: I didn't know if it had or not. That's why I was asking clarification from the Chair.

The Chair: I ruled the amendment in order. Is the entire act in the bill?

Clerk of the Committee: No.

The Chair: But the appropriate section is. The appropriate section of the Power Corporation Act is

provided, not the entire act. I don't know how I'd rule if there was room for debate.

Mr Silipo: Whether or not there's room for debate, there presumably still is room for whether something is in order.

The Chair: I know. What I am saying is that I don't know how I'd rule if I heard the debate, but I'm not going to hear any debate on it. In light of the fact that the appropriate section is in it, I've ruled it in order and I think it is in order. I think it's satisfactory. But it would be an interesting point to hear submissions on.

Mr Baird: We already voted on it, in any event, so I don't know how you could go back.

Mr Silipo: But we were going through it at a pretty fast pace. Are you saying you wouldn't hear arguments on this, Chair?

The Chair: I don't know how I'd rule if I did hear, but in light of the fact that I found it in order and that the

appropriate section is provided, I think on the face of it, that's sufficient. It would make an interesting argument.

Mr Phillips: If we could make it.

The Chair: If you could make it, that's what I said.

Have we dealt with section 40? Section 40 is carried.

Shall section 41 carry? Carried.

Shall section 42 carry? Carried.

Shall the long title carry? Carried.

Shall Bill 16, as amended, carry? Carried.

Shall Bill 16, as amended, be reported to the House?

That concludes the matters outlined in the directions from the Legislature. I would entertain a motion to adjourn.

Mr Rollins: So moved.

The Chair: We are adjourned.

The committee adjourned at 1648.

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

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Ministry of Finance

Mr Scott Gray, counsel, municipal and planning law,
Ministry of Municipal Affairs and Housing

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ISSN 1180-4386

Legislative Assembly of Ontario

Second Session, 36th Parliament

Assemblée législative de l'Ontario

Deuxième session, 36^e législature

Official Report of Debates (Hansard)

Thursday 26 November 1998

Journal des débats (Hansard)

Jeudi 26 novembre 1998

**Standing committee on
finance and economic affairs**

**Comité permanent des finances
et des affaires économiques**

Courts of Justice Amendment Act
(Improved Family Court), 1998

Loi de 1998 modifiant la Loi
sur les tribunaux judiciaires
(amélioration de la Cour
de la famille)



Chair: Garry J. Guzzo
Clerk: Susan Saurial

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Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRSCOMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES

Thursday 26 November 1998

Jeudi 26 novembre 1998

The committee met at 1002 in room 151.

SUBCOMMITTEE REPORT

The Vice-Chair (Mr Wettlaufer): Good morning, everyone. We'll call to order the meeting of the standing committee on finance and economic affairs to deal with Bill 48, the Courts of Justice Amendment Act. You all have in front of you the report of the subcommittee. I wonder if we could have a mover.

Mr Gerry Martiniuk (Cambridge): I move that the subcommittee report made on November 14, 1998, be adopted.

The Vice-Chair: Is there any discussion?

Mr Peter Kormos (Welland-Thorold): If I may, Chair, can I ask about the numbers of individuals or groups wanting to make submissions? Obviously I'm concerned about the adequacy of the time frame. Could we determine from the clerk whether there was a huge demand for participation or whether the time frame that's provided for the subcommittee report is adequate?

The Vice-Chair: My understanding is that three parties consulted on this and agreed that there would be the one day slotted for it.

Mr Kormos: But we're now debating the subcommittee report, you see. This is the purpose of presenting this to the committee, because now the committee has a chance to determine its adequacy. The committee can reject this. It doesn't matter what the three members of the subcommittee determine. That's why we have a report. Now the report comes to committee and it's being debated to determine whether or not the committee's going to accept the report. The committee can reject the report.

I'm asking, in the course of that, if the time frames contained in the subcommittee report are sufficient. If they are, then obviously I'm going to be inclined to support the subcommittee report. Don't snatch defeat from the jaws of victory here.

The Vice-Chair: Mr Kormos, you will be very pleased to note, I am advised by the clerk that we have slotted in everyone who asked make a submission.

Mr Kormos: Well, God bless. Good to hear. That wasn't that difficult, was it, Chair?

The Vice-Chair: Any further discussion? All in favour? Passed.

COURTS OF JUSTICE AMENDMENT ACT
(IMPROVED FAMILY COURT), 1998LOI DE 1998 MODIFIANT LA LOI
SUR LES TRIBUNAUX JUDICIAIRES
(AMÉLIORATION DE LA COUR
DE LA FAMILLE)

Consideration of Bill 48, An Act to Improve Court Services for Families by Facilitating Expansion of the Family Court and to make other amendments to the Courts of Justice Act / Projet de loi 48, Loi visant à améliorer les services fournis aux familles par les tribunaux en facilitant l'expansion de la Cour de la famille et apportant d'autres modifications à la Loi sur les tribunaux judiciaires.

MINISTRY BRIEFING

The Vice-Chair: OK, we have in front of us members from the ministry for a ministry briefing. Would you please identify yourselves for the record, please.

Mr John Twohig: My name is John Twohig. I'm with the policy branch of the Ministry of the Attorney General.

Ms Linda Groen: I'm Linda Groen. I work with the family initiatives project.

Mr Twohig: The essential structure of the Unified Family Court, as we now know it, referred to as the family court branch of the Ontario Court (General Division), was put in place in 1995. The act provides that the court can be expanded to other areas of the province by proclamation when the federal government makes judicial resources available. In the 1995 expansion, Kingston, Napanee, London and Barrie were added to the list of locations for family courts following the successful pilot project in Hamilton, initially begun in 1977 and made a permanent fixture of the court structure in 1985.

In Unified Family Court, as you know, all family law jurisdiction is unified at one level of court, as opposed to two levels of courts elsewhere in the province.

The goals of this bill were discussed during second reading and are summarized in the explanatory notes and in the compendium. Just by way of very brief background, early in 1997 the federal government announced that it was prepared to make more judges available across the country to allow for the expansion of Unified Family Courts. The amendments contained in Bill 48 were requested by the judiciary as part of the planning for the

further expansion of the family court branch of the Ontario Court (General Division).

To highlight some of the major features of the bill:

The bill makes it clear that the Chief Justice of the Ontario Court (General Division), Chief Justice LeSage, is head of the family court and provides for the full integration of the family court into the regional structure of the Ontario Court (General Division). This is accomplished while recognizing the specialized nature of the family court. The Ontario Court (General Division) is administered by the Chief Justice through eight regional senior justices who are located in the eight regions of the province which have been established for judicial administrative purposes.

The bill abolishes the position of associate chief justice, family court, but creates as a permanent position the position of senior judge of the family court. As an aside, I note that the position of associate chief justice, family court, was never provided for by the federal government, and the position was never filled.

The creation of a senior judge position, with the responsibilities spelled out in Bill 48, provides a unique recognition of family law matters. The senior judge joins the regional senior judges and the associate chief justice as part of the judicial executive of the Ontario Court (General Division). The bill also deals with other issues such as jurisdiction over young offender matters, rotation of judges into the family court and out of the family court, and other minor amendments.

In relation to the Young Offenders Act, the Ontario Court (Provincial Division) and the family court have what is known as concurrent jurisdiction over young offender matters. Either court is empowered to hear what are commonly called YOA cases. There has been some debate over which court is more appropriate for these cases. In the approximately 44 court locations in Ontario where there is no family court, YOA cases are heard in the provincial division. Elsewhere in Canada, YOA cases are heard in the provincial courts, although there was some discussion that Nova Scotia may include YOA cases in their new Unified Family Court.

When the family court was expanded in 1995, YOA cases were heard in Hamilton, Kingston, Napanee and London. YOA cases were pulled by the judiciary from Hamilton in 1995 and from Kingston in September 1998. We understand that the judiciary, after consultation with local bar and the community liaison committees, intends to pull these cases from the Napanee location in January 1999 and from London in early in 1999. The removal of YOA cases allows for greater expansion of the family court and effectively deals with issues that have arisen concerning court facilities and holding cells.

1010

The amendments also recognize the constitutional authority of the Chief Justice to rotate judges in and out of the family court. In the case of Volante and the Queen, the Supreme Court of Canada held that one of the essential conditions of judicial independence relates to the institu-

tional independence of the tribunal. At page 709 of that case, the Supreme Court said:

"Judicial control over the matters referred to by Howland, Chief Justice of Ontario — assignment of judges, sittings of the court, and court lists — as well as related matters of allocation of courtrooms and direction of administrative staff engaged in carrying out these functions has generally been considered the essential or minimum requirement for institutional or collective independence."

Any legislative limits on judicial control over the assignment of judges would be inconsistent with this principle.

The other, minor amendments included in the bill are clarification of the appeal routes for certain enforcement matters; transitional provisions for pending family law cases in areas where the family court is established; delete reference to part III of the Courts of Justice Act, which no longer exists; and delete reference to what used to be called the Unified Family Court.

One matter unrelated to the family court which is included in this bill involves cabinet's authority to fix the remuneration of provincial judges.

Turning to the bill to give you an overview, the bill consists of four sections and two schedules:

Section 1 indicates that only one of the schedules will ever become law. The Courts Improvement Act was the act that was passed in 1996 which would have changed the names of the courts. If that act has been proclaimed when Bill 48 comes into force, then schedule B is in force. If the act — that is, the name change — has not occurred, then the more complicated schedule A comes into force.

I can tell you now that the federal government has passed their complementary legislation to change the court names. That occurred last week, November 18, so there's no longer any impediment with proceeding with proclamation of the Courts Improvement Act. I can't tell you when that might occur, but it seems more likely that schedule B would be the section that comes into force.

Section 2 of the bill restores the regulation-making authority to fix remuneration for provincial judges. For the most part, this is already covered in the framework agreement, which has formed part of the Courts of Justice Act since 1995. The agreement, however, does not include pensions, and the function of the regulation is to cover this aspect of remuneration and any other gaps until the framework agreement is fully operational.

Subsection 2(2) provides that in case of conflict between a regulation and the framework agreement, the framework agreement prevails.

Subsection 3(1) provides that the act comes into force on proclamation except the remuneration section, section 2, which is deemed to have come into force on February 2, 1995.

Section 4 sets out the short title of the act.

Schedule A can be found on pages 3 to 14 of the bill. It consists of three parts. Part I makes the amendments to the Courts of Justice Act which I've just summarized. Part II repeals a number of provisions in the Courts Improvement Act — that is, the name change act — which are no longer

required. Part III comes into force on the day the Courts Improvement Act is proclaimed and restates the bulk of the amendments in part I to reflect the new court names. A limited number of part I amendments are not restated because they do not refer to new names of the courts or court officials.

By way of example, you will find at section 2 in schedule A, part I, the composition of the family court. That section is essentially in all respects repeated in subsection 20(3) in part III of schedule A and again in section 2 of schedule B. So in effect — and I apologize for the complication of this — you have the bill repeated almost three times in the schedules because of the lack of proclamation of the Courts Improvement Act.

Schedule B is set out on pages 15 to 20 of the act and it makes the amendment requested by the judiciary which come into force when the Courts Improvement Act is proclaimed.

Unless there are questions, that's my overview.

The Vice-Chair: I believe there probably will be questions. We have allotted, according to the subcommittee report, five minutes per caucus, beginning with the opposition.

Ms Annamarie Castrilli (Downsview): I'd really like to make a few comments more than ask a question. The bill, on the face of it, is reasonably clear, despite what you've mentioned in terms of the repetition that was required because the legislation hadn't been proclaimed.

It's fair to say that there's a great deal of support for this bill. I think the judiciary has wanted it. The experiments with the Unified Family Court have been by and large successful. The notion that we would have an integrated justice system with respect to family law is not only appealing; it's necessary. It makes absolutely no sense that you would have individuals who are involved in family law having to appear before two different courts, as often happens.

The concerns, from our perspective, really revolve around two issues: One is the adequacy of the court system to be able to address the very real issues that come before them, and by that I mean the justice system in general, not just the family court. Some \$45 million has been cut from front-line services in justice, and one has to wonder whether that can really deliver the kinds of services required at this point.

We've been through hearings, last week and the week before, on the legal aid bill, and we've heard just how difficult it is for individuals to get justice, particularly in the area of family law, where we know that many individuals go unrepresented, some 67% of people in family law. So the family law judges aren't simply adjudicating; they're having to deal with a whole lot of other problems, including, sometimes, having to give information to people before them, to plaintiffs. This is very serious, because the family courts are becoming, as the family law association said, a dumping ground for a lot of social problems. What we do in family law is critical and it's important, and that's why this bill is timely.

In terms of concerns, as I said, there's the whole issue of the justice system and the adequacy of the justice system to be able to meet the needs of Ontarians, but speaking specifically to the bill, the concern we have is that given the complexity of family law, given that you're dealing with a whole series of statutes, where you're dealing with financial and emotional, often traumatic, matters, it's important that the legislation provide for expertise in that area. We've talked about this in the House, and I want to raise it because I think it's important for all members of the committee to think about this.

It has been the law and it has been traditional that judges in family law would have expertise in family law. This particular legislation deviates from that. It gives a great deal of flexibility to the Chief Justice and the senior regional judges to rotate judges through their divisions and through family court, but there's no requirement that they be judges who are experienced in family law, and that's critical here. I want to stress that. We're not filibustering on this bill. We are very generally concerned about the quality of the justice that will be rendered.

1020

That's not to say that the Chief Justice and the regional judges don't have the best of intentions in mind, and even the Attorney General may feel as I do. In fact, they've stated that it's important to have that family law experience, so we are puzzled as to why it's not specifically set out in the bill.

Family law is a very sensitive area that requires extreme delicacy and skill, and you need people who've had practice at the bar in that area to be able to make competent decisions. I hope we'll have an opportunity to discuss this further during the committee.

The Vice-Chair: Would the ministry like to respond?

Mr Twohig: Only to say that I believe we agree that a specialized background in family law matters is important. The difficulty is that in my view, the only way you're only going to have family court judges sitting in family law matters is to create the family court as a separate, free-standing court. That hasn't happened. It's part of the Ontario Court (General Division) and as such, there will always be a certain amount of rotation of judges into the family court. That has already occurred in the five locations where the court sits.

The other bit of comfort is that the federal government appoints certain judges to the family court. The expectation is that those judges will be the core judges who will stay in that family court and that the rotation is supposed to be a minor or supplemental part. That's the expectation. I think the problem we have — referring to the Valente case, which I quoted — is that once the court structure is established, once the walls are built, we have a very limited capacity, from a constitutional point of view, to direct the Chief Justice who may or may not be rotated into the court.

Ms Castrilli: Can I ask —

The Vice-Chair: Sorry, Ms Castrilli. You're out of time.

Mr Kormos: If Ms Castrilli wants some time, let her use some of mine, because we've got to move on and get this thing dealt with.

Ms Castrilli: Only to say that I understand what you're saying, but I think —

Mr Kormos: Don't use all my time.

Ms Castrilli: No, I'll be brief.

It's not an issue of fettering the discretion of the judiciary, the Chief Justice and the senior regional judges. Nevertheless, I believe it's important to be very clear as to the standards that we expect in family court, and you do that by setting out some minimum qualifications.

Mr Kormos: I read about you in the paper today, by the way, Chair. Did you see that? You don't get in the press often.

The Vice-Chair: I don't usually read about myself in the press.

Mr Kormos: The Toronto Star, by God: Wayne Wettlaufer versus Gary Leadston. They say nice things about you. They say, "But sources say Wettlaufer has been more attentive to the riding." That'll go a long way in a nomination contest.

The Vice-Chair: I thank you for those kind comments. I'll use them in my campaign.

Mr Kormos: "But insiders say this gentlemanly veneer barely conceals the animosity between the two, and the campaign could get nasty."

The Vice-Chair: Don't believe everything you read.

Mr Kormos: It's insiders, though.

The Vice-Chair: Unnamed.

Mr Kormos: If it was a quoted source, you could suspect they were merely trying to put spin on the matter, but this is inside dope. You know what? I'm betting on the "nasty" part.

In any event, Ms Castrilli has addressed the concern. It's been addressed during the course of second reading debate: (1) the rotation of judges; (2) the non-exclusivity of family court judges in dealing with YO matters, the junior level, the first level, level 1. Is that the terminology? Level 1?

Ms Groen: You're talking about the younger age group, the phase 1?

Mr Kormos: Yes, thank you: phase 1.

Ms Groen: There's no distinction in the legislation, but there does seem to have been a distinction on how we —

Mr Kormos: I hear what you're saying about there being no fixed jurisdiction currently, which is what you said, yet in practice, where I come from — I can't speak for Toronto, but my sense is that in most of smaller-town and small-town Ontario, yes, there has been exclusivity in practice by family court judges dealing with phase 1 YOs.

Ms Groen: I think that may have been the case 10 years ago.

Mr Kormos: It wouldn't be inappropriate for you to comment in that regard.

Ms Groen: But I think in the last 10 years, approximately, judges have been appointed with two hats, so often they will be expected to have criminal matters and family

matters, depending on what the work is. So while it was the case some years ago, it is not the case in the majority of the province now.

Mr Kormos: I'm wondering, Chair, if there's any way of getting — does the ministry have data in that regard? I'm not challenging you. I would just very much like to see what the status quo is in 1998 as to the portability of what I call provincial court, family division, versus provincial court, criminal division, judges in dealing with phase 1 YOs and/or family matters. I know that jurisdictionally they can do it. I'm just wondering if there are data or anything that would —

Ms Groen: I don't think we have data on it, because it's within the purview of the judiciary to schedule matters.

Mr Kormos: Yes, I know. So all we've got is anecdotal —

Ms Groen: Yes.

Mr Kormos: Do you agree with me? That's the difficulty. I'm not criticizing you folks, but the Solicitor General, the Ministry of Correctional Services, the Ministry of Attorney General, considering that they're dealing with — talk about anecdotal. My anecdotal impression is that they seem in some respects to have a pretty poor handle, statistics-wise, on some of the stuff that's going on. Is that a fair observation, or am I way out of line in suggesting that? Again, no criticism of either of you, obviously.

Ms Groen: They're not separated. Young offender matters are not separated by age group, nor are the hours spent on the various age groups tracked.

Mr Kormos: But you understand my problem. Here we are, indicating that this could be problematic from our perspectives or from the input we've received. Then we're putting this to you and you're saying, "That maybe was the case, that there was this exclusivity by practice 10 years ago, but not now." I'm saying, OK, I don't dispute what you've got to say; your observations are as legitimate as anybody else's, perhaps more so. But then I'm saying, "Show me," and you have to say, "I can't, because it's not the sort of thing that's tracked." I find it bothersome that that information isn't available in terms of data, empirical reporting. I'm suggesting that's a problem.

Mr Twohig: Just to wade in here a little bit, my understanding is that prior to 1989, the Provincial Division had three sections: the civil, the criminal and the family. It was very easy then to try cases in a separate division. When that court was merged, we have the Ontario Court (Provincial Division) and we have judges, and they hear a whole cross-section of cases, family and criminal. I don't believe, as Linda has indicated, that we track which judges hear which matters, let alone whether they're hearing phase 1, phase 2 or phase 3 in young offender matters.

Mr Kormos: What I'm saying is that maybe we should be or should have —

The Vice-Chair: Thank you, Mr Kormos. Your time is up. I already gave you extra time because of those nice things you said about the Chair earlier. We'll move now to the government; Mr Martiniuk.

Mr Kormos: Chair, I should indicate that I endorsed Mr Ford the other day here in committee. If you'd like me to endorse you, I'd be pleased.

The Vice-Chair: That's the kiss of death. Thank you, but no thank you.

Mr Martiniuk: We'll be hearing presentations, so I will be short. I think it's fair to say that all parties welcome the additional Unified Family Courts. They have proved to be effective and efficient. A one-window shopping scheme is welcome. We are most pleased that we will have an additional 17 judges.

I take it that the two major issues of our discussion — the first will revolve around the Young Offenders Act. In a perfect world, the position put forth by Mrs Castrilli could have some validity. Unfortunately, as we know, the Ontario government does not have control over the number of Unified Family Court judges within the jurisdiction of the federal government. Therefore, injecting young offenders into the Unified Family Court system will of necessity take away from their use in family matters. In this imperfect world, we must choose our priorities.

I happen to think that a marriage breakdown and its effect on the children — it can be very traumatic and it's important that the matter be dealt with. I personally experienced, as a lawyer, family matters, and I realized that the longer the disputes go on the more solidified each position becomes, to the detriment not only of the parents but, more importantly, of the children. I look forward to the debate in regard to that issue.

1030

In regard to the rotation of judges, as we've heard, this is probably within the jurisdiction of the Chief Judge in any event, but I think it's important — and this is a carry-over from our other bill — that we give the flexibility required to the people who are in fact presiding over our courts, that is, the judges, to ensure that justice is not delayed. We don't know where the additional family courts will be. If they're in smaller areas, there might be occasions where the list becomes intolerable, where justice is not moving quickly enough, and there could be those cases where another judge, who unfortunately may not have all the abilities we would require in family court work, could sit in family court.

I have great faith in our judges and I'm sure they'll rise to meet that challenge. Flexibility is important to ensure that justice is done.

The Vice-Chair: Any further questions from the government side? Mr Twohig, Ms Groen, thank you very much.

CHRISTINA MacNAUGHTON

The Vice-Chair: Next on the presenter's list is Christina MacNaughton, a lawyer with Lancaster, Mix and Welch. Good morning, Ms MacNaughton. You have 15 minutes to make a presentation. You can use all or part of it, and if there's any remainder we will have questions from the party members here. You can begin any time.

Ms Christina MacNaughton: Thank you, sir. The brief I wrote has been circulated, and I'll be saying a couple of things not in that brief this morning. Thank you for the opportunity to be here. I have been pleased to have my first experience of taking part as a citizen of this forum of the administration of the law.

I am a family law lawyer. I have been practising family law in the regional municipality of Niagara for over 20 years, and I am certified by the law society as a specialist in family law.

I'm here speaking in support of the bill overall in that it represents the extension and expansion of the family court as a unique court throughout the province, but I have a couple of suggestions for change, which actually have been alluded to by Ms Castrilli already this morning and by my friend Mr Kormos. I call him my friend because we're from the same judicial district. I practise in St Catharines and he used to practice in Welland, which is just down the road, the other county town.

I personally have been waiting with bated breath for the expansion of the unique family court across Ontario since 1977 when the pilot project, the Unified Family Court in Hamilton-Wentworth, was launched. That was the year I was called to the bar. It's been a long wait. I've got a lot more grey hair now than I had then.

What I have noticed in the 21 years of my practice is that in 1977 you could do family law as a lawyer as part of a generalized practice and not go terribly wrong as far as competence and service to the public was concerned. But family law over those 21 years has become infinitely more complex. Quite frankly, the non-specialized lawyers and with them, the non-specialized judges, are beginning to fail to keep up. This is not serving the public well. We have more family law disputes now than we did 21 years ago.

Every succeeding Stats Canada census tells us that we have a higher divorce rate, that we have more children living in single-parent families, often headed by women, often in poverty; that we have more couples deciding to live together without the benefit of being married. Those are nightmare cases, because that law evolves one little purpose at a time.

"What are my rights?" a client says as a common-law spouse. You always have to say, "It depends for what purpose you're asking me the question," because the answer isn't found in one place; it's found all over the place.

We're redefining what we mean by family. The Supreme Court is expected, within a week or so, to issue the decision in *M v H*, which will tackle the questions as to whether same-sex couples, who have lived for a period of time in a financially interdependent relationship, owe a duty of financial care to each other at the point that the relationship breaks down, if it does.

There has been constant, fundamental legislative change facing the courts and the family law lawyers in Ontario in the last 21 years. Since 1977, we have fundamentally rethought property division between spouses twice: once in the 1978 Family Law Reform Act, and

again in 1986 with the fundamentally, yet again, different Family Law Act.

In 1978 we codified a number of things concerning children, including paternity issues, and codified what we expect the courts to think about in determining best interests of children in deciding which parent's house they will live in and how they'll be taken care of in the Children's Law Reform Act.

In the late 1970s, the official guardian's office, now the office of the children's lawyer, vastly expanded its role to give a voice to children in protection issues, where children's aid societies were seeking to remove them from their homes and in bitter custody disputes between their parents.

In 1985 the Young Offenders Act replaced the Juvenile Delinquents Act and changed the thinking modes around how we deal with young people who are in trouble.

The 1985 federal Divorce Act changed how we think about divorce and took another look at obligations of spousal support, child support, custody and access issues; and came to grips, as other statutes do, with how you try to meet the needs of separated families when the needs of the children change on a day-to-day basis. The only constant that faces a family, even a separated family or reconstituted family or restructured family, whatever you want to call it, is constant change. The system needs sensitive, specialized judges and lawyers in order to be aware of the myriad issues that are raised for families in that area.

We have had the reintroduction of federal, and now provincial, child support guidelines more recently. Every time any of these legislative concerns have come up, we've had to go back to the drawing boards. A specialized court is required to deal with it. The reason I'm concerned about the bill not providing for at least a certain level of education required for the judges — I know the judiciary are independent, but by God, we owe the people of the province judges who know what they're doing. If you're going to be rotating people into the specialized court who don't normally practise there, for heaven's sake make sure they know what they're doing.

A good example of the kind of thing that happens with non-specialized judges is what happened when the Divorce Act of 1986 said that if you're going to come back after a time-limited support order and ask to have it varied after the time has run out or when the time's about to run out, you'd better have a causal connection between why you want to reinstitute that time-limited support order and the marriage and what went on in the marriage. Inexperienced judges who couldn't read the legislation in front of them started applying that causal connection idea to first instance approaches for support. That was never intended.

It took all the way down to the Moge decision in the Supreme Court of Canada to finally have Justice Claire L'Heureux-Dubé essentially say in her judgment — it can be boiled down to, "The act says what the act says; don't take it further than it says."

Civil litigation and family law are fundamentally different. I will take it as read that you are aware of that. The

concern I have as well is that a young offender matter is not a criminal matter so much as it is a family matter. I'm concerned that the matter of the YOA has been left to the Provincial Division, which will now be a specialized criminal bench. It's tempting to say, "Well, it's criminal, so it should go to a specialized criminal bench."

I spent some time in preparation for today talking to my colleagues in Niagara who do a lot of young offender work, which I myself do not do. They tell me that there is a qualitative difference in what happens in the YOA court when it is a provincial court criminal specialist judge sitting as opposed to a provincial court family specialist judge sitting. The family judges are much more context sensitive. They know and will understand and make some allowances for, in their search for a solution for this young person, whether that child is going through such things as that the family are drunks, the kid has been in and out of care with the children's aid society — any number of factors get taken into account. They say that the family court judges have a far more sensitive understanding of what's available in the community to assist these kids.

The vast majority of kids who come before YOA court are there but once and you never see them again, either in YOA court or in adult court. The courts are probably kept busy with about 20% of the cases that come in front of them because those are the kids who are repeat offenders. But about 80% or so, my colleagues tell me, you see but once. They attribute a lot of that to the kind of way that the court is able to be more imaginative in how they are handled.

1040

I'm concerned that if you're going to be leaving the YOA behind, as it were, in the provincial court and not taking it to the expanded family court, then I would advocate that there be some provision made for the community resource and community liaison committee structure for that remnant court to provide them with the kind of awareness and level of education that the family court judges have been able to take for granted because of their wider experience and exposure in family law matters. What you're wanting to do is redeem those kids and turn them around; you're not wanting to consign them and say, "Here you are in the criminal court system and here you will remain."

I also wonder too about the clean slate principle. Kids are entitled to the principle that their juvenile record is left behind them when they get to be adults. But what if you had a kid who had engaged in a particularly spectacular prank that got him and his buddies in trouble? It wasn't anything criminal but it was in the nature of a prank that went wrong, but it's the kind of thing that becomes notorious in the folklore in the back corridors of the courthouse.

That child grows up and comes before that same judge or the judges of that same court as an adult with an offence. He's entitled to a clean slate. Judges are people. People remember things. He's not going to get quite the same consideration, I would submit, than if he was able to come completely anonymously with an absolutely clean

slate to that court. There can't help but be some human carry-over.

Subsection 12(1) of the bill, "Composition of General Division": The thing that crossed my mind as I read the bill was wondering, if the family court is going to be expanded largely across the province, why there isn't also some provision for regional chief judges of that court. I recognize that it is a branch of the General Division, but it seems in the formula to only have definitely representation by one judge on the executive, namely, the senior judge of the family court. There's no guarantee in there that any part of the regional chief judges are going to be family court judges who will provide that kind of input to the sort of needs that that special court will have in sorting out the availability of services and so on in the various issues the judges determine when they are together.

I'll conclude my remarks there so that there may be a moment or two for questions.

The Vice-Chair: Thank you, Ms MacNaughton. We have four minutes remaining, roughly one minute and a bit for each caucus. We begin with Mr Kormos, of the NDP.

Mr Kormos: Very quickly: I appreciate your comments, obviously, about the judges who may or may not have exclusive jurisdiction over phase 1 YO. You raise an interesting point with the provision of regional senior judges in the final part of your submission.

We just dealt with Bill 68, the new Legal Aid Act, which talked about the capacity of the corporation to merge areas. Obviously, in Niagara I could see the writing on the wall, a merger of Niagara north and Niagara south —

Ms MacNaughton: It's already occurred, Mr Kormos.

Mr Kormos: — in terms of legal aid, which would provide efficiencies. I don't quarrel with that. But I'm trying to explain to the government how in Niagara and many other parts of the province we don't have public transit, we don't have the access.

There's a plea out now for St Catharines to be the seat — no quarrel — for a Unified Family Court. Mind you, that leaves Niagara Falls out of the ballpark; I appreciate that. I'm wondering if you could comment on the need to have Unified Family Courts well distributed rather than centralized because of the problems, in Niagara alone, of access to the courts.

The Vice-Chair: I'm sorry, Ms MacNaughton and Mr Kormos, but he took so long to ask the question there's no time for the response.

Mr Kormos: When you answer the Tory comment, feel free to comment on that.

The Vice-Chair: Would the government like to ask a question?

Mr Martiniuk: How long do we have?

The Vice-Chair: Just over a minute.

Mr Martiniuk: Thank you very much for your presentation. I found it helpful. I do, however, have some concern about your comments regarding influences on judges. I come from a smaller city, in the region of Waterloo, the city of Cambridge. It was a sleepy small town when I first went there in 1970. Obviously, the

judges are persons who are well read. They read the local press, they belong to the local clubs, and they hear many things.

I, unlike you, do not feel that these local influences would in any way influence their independence of mind. To say that they're human — I'll acknowledge that. And they were lawyers. However, I think they train themselves to ensure that they are not influenced by these matters. Unlike you, I have more confidence in our judges to be independent in that respect.

Ms MacNaughton: By and large, I agree with you —

The Vice-Chair: Mr Martiniuk, you are afflicted with the same illness as Mr Kormos; you've used up all your time.

Ms Castrilli: Well, Chair, I learn fast. I'm not going to make the same mistake.

I have a lot of questions, but I'll ask you one in particular about the last point you made, which you didn't have a whole lot of time to expand on; that is, your fear that we may not be moving towards a truly expanded family court if we're not providing some assistance to the regional Chief Justice. Could you just elaborate on that a little bit?

Ms MacNaughton: Having one person designated essentially as the representative of the family court only on that body, visibly designated, indicates to me that the government is perhaps not serious in really expanding it across the province, because at that point, if it's really expanded across the province, there will be a lot of judges who are specialized and only have one person to carry their concerns.

Ms Castrilli: Thank you. Your comments were very thoughtful.

Ms MacNaughton: Thank you. By the way, I agree on the whole with what Mr Martiniuk says, but there are always, in the non-specialized courts particularly, judges who don't care to be there doing that subject matter and who in fact don't do it well. They are not the majority of judges by any means, but there are some. They do not serve the public in all subject matter equally well.

The Vice-Chair: Thank you, Ms MacNaughton.

JOHN BLACK

The Vice-Chair: Our next presenter is John Black with Stuart, Cruickshank. Mr Black, good morning. Welcome.

Mr John Black: Good morning, Chair. Good morning, members of the committee.

The Vice-Chair: You have 15 minutes for your presentation. You can use all or part of it in your presentation. If there's anything left over, the members of the three caucuses might ask you some questions.

Mr Black: Thank you. My submission will be fairly brief. I don't have any handouts for the committee, and likely my submissions will not require a reading text in any event.

I am here in my personal capacity, but I'm also president of the Muskoka Law Association and central-east

council member for the Canadian Bar Association — Ontario. My practice has revolved around general litigation since my call in 1991 and I've practised ostensibly in Muskoka since my call. I've practised with an emphasis in family law, and general litigation and also some criminal defence work involving young offenders. I've made numerous appearances in both Ontario Courts, the General and Provincial Divisions.

Presently in the district of Muskoka there's no Unified Family Court so there are two tiers, Ontario Court (Provincial Division) and Ontario Court (General Division). The closest Ontario Court (General Division) family court is in the county of Simcoe, to our south.

With respect to the amendments to the Courts of Justice Act, I submit that the amendments are fairly minor in nature. I've canvassed the amendments with some of the members of my association, and from what I can glean from those conversations, certainly members of the Muskoka Law Association are very much in favour of the Unified Family Court coming to our district. Presently the split jurisdiction, as you've likely heard from the previous speaker, adds expense and delay and aggravates the personal circumstances that litigants find themselves in, particularly at a difficult time when family separation and issues relating to custody of children, child support and so forth are in dispute.

The expense that litigants incur in a split jurisdiction forum is self-evident; often I'll find parties in the Ontario Court (Provincial Division) asking for custody of children, child support, perhaps spousal support, but also asking for exclusive possession of the matrimonial home, equalization under the Family Law Act, and matters that only the General Division can handle. These items are obviously of concern to the committee.

1050

What happens is that some matters may be dealt with in the Provincial Division and other matters deferred to the litigants to be dealt with by way of separation agreement or an application to the General Division. A lot of people in the Provincial Division in our jurisdiction apply to the Provincial Court themselves; they prepare their own forms, and one or two appearances later, the duty counsel has met with them and they find out after a month or two that some of the issues that are very important to them cannot be dealt with in that forum. Then another few more months elapse and then you have a status quo created because of the passage of time, which can often be very prejudicial to the parties' interests, especially when it relates to exclusive possession or custody.

Those issues are very real issues, and you often find problems with jurisdiction where private litigants will come and try to vary terms of custody or child support which had been dealt with previously in the General Division by either divorce judgement or General Division order. So it's a jurisdictional problem.

My experience has been that Provincial Court, depending on the judge hearing the matter, may deal with the matter despite the jurisdictional element, and it may be dealt with in error. To avoid this type of problem, UFC is

welcomed in Muskoka and we are all in favour of the expansion northward; the proviso being that if UFC does come to Muskoka that there be regular sittings of the court. Presently the sporadic General Division motion dates — although they're somewhat regular, but they are scattered — can lead to problems because of a number of matters heard on one day and certain family issues not being dealt with adequately. There has to be regular meetings of the court because timeliness is very important to family law dispute resolution.

Another advantage to the UFC, of course, is the specialization, the fact that the bench will be well acquainted with family law issues and the case law, which is ever-changing.

So consistency, timeliness and the full service of the UFC is a definite advantage, and we're all in favour of that expansion throughout the province. If this amendment to the Courts of Justice Act facilitates that expansion, we're all in favour of it.

The amendments to Bill 48 that I think are the more important ones relate to the ability of the Chief Justice to rotate judges, presumably in and out of the UFC, as that Chief Justice decides. Unlike the previous speaker, I trust in the discretion afforded to the Chief Justice and to the individual justices hearing matters to be sensitive to the fact that the UFC requires a certain degree of specialization. I personally don't have a problem with the discretion afforded by these amendments to the Chief Justice to move justices among the divisions. Consistency, of course, is very important, particularly in the family law context, so that the development of case law is done in an orderly fashion and so that justice is meted out to the litigants.

As an aside, George Beatty at my office recently was appointed to the Provincial Division in Bracebridge. I commend the Ministry of the Attorney General and others for his appointment. If I may make a plug for him at this moment, he'd make a wonderful UFC justice for Bracebridge. I'll leave that as it stands.

Mr Kormos: Another 25 grand a year for that.

Mr Black: Well, I'm sure Mr Beatty would be in favour of it.

Mr Kormos: And the pension fund makes the federal MPs' pension fund look pale in comparison.

Mr Black: As to the Young Offenders Act matters in Bill 48, I've again spoken to certain members who practise in defending young offenders in Muskoka and I also do criminal defence work involving young offenders. My experience has been that although, as the previous speaker indicated, there seems to be sensitivity of family court judges in the Provincial Division to deal with young offenders and afford them the proper emphasis towards rehabilitation, as envisaged by the Young Offenders Act, the nature of a criminal process is very distinct from the family law forum. People I've spoken to, anyway, believe that the young offenders are properly dealt with in the Ontario Court (Provincial Division) for that reason. Obviously, there's some overlapping in certain cases, where you have a young offender who is in need of protection.

However, there could be a parallel proceeding under the Child and Family Services Act if that is the case.

As the previous speaker indicated, there is concern about the sensitivity of the provincial court judges, particularly ones who do adult criminal matters, to the nature of the YOA, to the Young Offenders Act. There have been cases where, in my experience, the bench has dealt with young offenders in a rather maximum way, if I can use that term. I think those concerns can be allayed by, simply, education of the bench and dealt with in that manner. There's a caveat here; we don't have a UFC, so I don't have any exposure to how young offenders are dealt with in a Unified Family Court format.

Those, essentially, are my submissions. I welcome any questions.

The Vice-Chair: Thank you, Mr Black. We have six minutes left for questions, roughly two minutes per caucus. We'll begin with the government caucus.

Mr Toni Skarica (Wentworth North): I'm from Hamilton and we've had a UFC there for 10 years. I found interesting your comments regarding YOA matters. What I found was that the UFC judges were very familiar with family law, but when you move into YOA cases you're dealing with case law, evidence and so on and so forth that really relate to the criminal area, and the Provincial Court judges on the criminal side, because they were basically living that law day to day, particularly the charter when the charter came in, were better suited to deal with those.

Mr Black: I'd agree with that. We're dealing with two different types of legislation: one is family law; the other is criminal. You're right. The issues regarding charter applications, the admission of certain evidence, and the different burdens of proof as well, beyond a reasonable doubt versus balanced probabilities — they're two very different streams of the judicial system. The Provincial Division judges who hear matters involving adult offenders have a better background to deal with those very important issues to ensure that the young offenders' rights are protected. If you have a family court judge who is not dealing with criminal matters, matters of the Criminal Code, the Young Offenders Act, on a regular basis, there's a possibility that that judge's rulings may be rather uninformed, perhaps.

Mr Skarica: My experience was that the judges — there was no problem once they had the law, but it was just more efficient through the provincial.

Mr Black: Yes, that's fair comment. I'm not slighting the judiciary; I'm sure they're very capable. However, from a matter of procedure and for adjudication, I think the two should be separate streams.

Ms Castrilli: I just want to address one issue. I thank you for being here today. I think you agree with that to accomplish the goal of the justice system in family court, we need individuals who are experienced and who are sensitive.

It may interest you to know that the judicial appointments committee reported at the end of last year that the appointments that have been made over the last three and a half years are quite telling. The Attorney General has

only appointed seven women, one francophone, no aboriginals — not only else other than white males. I worry about that, because that too is important in how we deliver family law. We know that in family law court there are many, many women involved; that we're not all white, Anglo-Saxon males. I'd just be interested, from a practitioner's point of view, in what you think about that. What do you think we need?

1100

Mr Black: I don't have a problem with white males sitting on the bench, frankly. Well, no. Fair comment, and I think representation's important on the bench. My experience has not been that I've seen cases decided with any form of bias. Provided the appointment of judges continues to be on the merits of that judge, be it any gender or race or ethnicity, I think proper adjudication will be accomplished. I don't have a problem.

Mr Kormos: Mr Black, had you not qualified your response to Ms Castrilli, your response might have acquired those folkloric proportions that Ms MacNaughton spoke about that some crimes achieve in the hallways of courtrooms.

Obviously, I'm interested in and Ms MacNaughton raised and you addressed the issue of exclusivity of family court judges over the phase 1 YO matters. I hear Mr Skarica and I don't disagree, because I suppose if I were a defence lawyer by and large I'd want to run my trial, if it were a not-guilty plea, before a criminal court judge. But when it came to sentencing, in view of the fact that the YO is more treatment- and rehab-focused as compared to the Criminal Code, then I'd want a family judge. Do you understand what I'm saying? But that's one of the problems of the whole YOA: It uses a criminal model, yet its stated focus is treatment and rehabilitation, and in the criminal model treatment and rehabilitation are not congruous.

Mr Black: I think that if defence counsel were to refer to the provisions of the Young Offender Act, emphasize those in submissions with regard to disposition, and used case law in submitting a proper disposition there —

Mr Kormos: I hear you, but Ms MacNaughton also spoke about specialization and how difficult it is now. I appreciate that she was speaking about family law. My sense is that a family court judge who has dealt, so far, exclusively with YO phase 1 has a greater understanding of what's going on in treatment facilities, what's out there and so on. You can't really expect judges to be all things to all people, which also goes to the issue of rotation and whether there should be some constraints on the Chief Judge — we know there can't be — in terms of who he or she rotates into the Unified Family Court.

Mr Black: Obviously, the Chief Justice will have to be sensitive to those issues and will have to use his or her discretion to move the proper justice into the UFC or out of the UFC. I don't know exactly what your question is.

Mr Kormos: I'm looking to see whether you have some concerns that other people have about these issues.

Mr Black: No. As I indicated in my submissions, I trust in the discretion of the Chief Justice to make the

appropriate rotation and I trust in the judiciary to be sensitive to this issue.

Mr Kormos: Do you want this Hansard sent up to the Chief Justice? It might serve you well at some point.

The Vice-Chair: Thank you, Mr Kormos. Thank you, Mr Black, for your presentation.

JUSTICE FOR CHILDREN AND YOUTH

The Vice-Chair: We'll now move to our next presenter, Sheena Scott, executive director for Justice for Children and Youth. Good morning, Ms Scott. You have 20 minutes for your presentation. You can use any or all of it; if there's any left over, the various caucuses will have questions.

Ms Sheena Scott: Good morning. I'm Sheena Scott. I'm a lawyer with Justice for Children and Youth and the executive director. I've been practising both family law and young offenders law for children and youth for more than 10 years. Not surprisingly, I'm here to address the issue that was just addressed, specifically the jurisdiction of the family court versus the Provincial Court (Criminal Division).

We have some very serious concerns about taking the now concurrent jurisdiction of the family court in young offenders matters away from the family court and investing that jurisdiction solely with the criminal courts with respect to all young offenders. As you know, now the Provincial Court (Criminal Division) deals with the 16- and 17-year-olds, and in my experience, there is quite disparate treatment in primarily disposition, as you indicated, in terms of the two different streams and in terms of basic understanding of what kind of resources are out there for young people, what kind of, again as you said, treatment centres, what kind of supports within the community exist. The caseload of the criminal justices is so primarily adult-focused that what they know are the adult systems, the adult support systems, the bail program etc, things that don't necessarily apply to young offenders.

There's been discussion about the difference procedurally between family law and criminal law. Yes, absolutely the criminal courts understand criminal law better, but the Young Offenders Act is unto itself, and the criminal court judges sometimes aren't as familiar with the Young Offenders Act as perhaps they should be. This of course speaks to training issues across the board.

What we've found is that the two-hatters, those who sit on family and young offender matters, are by far the most aware of what's going on. I've been in court countless times where the parent is having the young person charged for something — I'll give you an example: taking \$20 from the cookie jar or something — and the family court two-hatter, who also sits on the young offenders matters, will be able to sit there and say: "Wait a minute. If you guys have a problem, sort it out. This doesn't belong in our criminal justice system. This is really a waste of everyone's time and money." And the matter's adjourned and then it's resolved. But I can bet you that if that same case is dealt with in the criminal division, that sensitivity,

that awareness and that type of resolution isn't going to occur.

I have a question for you and I don't know the answer; that is, what is the rationale for family court no longer having jurisdiction? In terms of the charter, in terms of other issues, I have faith that the family court can figure it out. They've used it in other contexts. That is not as much a concern to me. Certainly in terms of criminal procedure, for those family court judges who aren't familiar with it, yes, there may have to be some training, but the real focus is on the Young Offenders Act, and both sides need more training.

Another option would be to have a specialized youth court. I don't know if that's one that's ever been addressed or raised, in which you have judges — and there are judges out there who may have been doing family who may not want to go to the Unified Family Court, who may want to continue to do young offenders matters. It may be appropriate to have a specialized youth court and then we could address everyone's concerns.

Again, not knowing the rationale — if it's to save money, it's obviously not going to save the provinces any money, because they're going to be doing now all the administration of justice on the young offender matters. It's federal legislation, but the federal government is not going to be responsible for it. So if it's to save money, I make that point to you.

I'm just not sure of what kind of analysis has gone into the decision, so really I'd like to know. If the section is repealed and the jurisdiction taken from the family court, I would just emphasize that there has to be more education all around.

The Vice-Chair: Thank you. We have 10 minutes remaining, which is about three and a half minutes per caucus, beginning with the Liberals.

Ms Castrilli: Thanks very much, Sheena. I think the record of your organization in dealing with young offenders is clear and obviously an excellent one.

I'm almost tempted to give up some of my time to the Conservative government so they can answer your question, but they're going to have their three and a half minutes and hopefully you can press them when it comes to their turn.

In your experience, does the concurrent jurisdiction which now exists have any downside?

Ms Scott: Not for the young people who are dealt with under the concurrent jurisdiction, no. For the 16-year-olds and 17-year-olds it may have a downside in that they're being dealt with in the criminal process. That split is problematic, because they have some of the same problems as some of the younger people; some of their problems are really family-related matters at the root. For me, that is the only issue in the current situation.

1110

Ms Castrilli: In your view, what is the difference between the two in terms of the sentence, in terms of treatment?

Ms Scott: In the current system the criminal courts are very full, very adult-oriented. Everyone thinks young

offenders get off lightly. They don't, not in either stream; in either stream, they tend to get more than what an adult would get for a particular crime. But what I find is that the dispositions are more connected to the young person and to the goals of the Young Offenders Act under the family court system than under the criminal court system. I'm not saying they're all bad, because they're not. In terms of process and criminal law expertise and charter expertise, I haven't had a problem with a family court judge in that area. Maybe other people have, but I certainly haven't.

Ms Castrilli: In your experience, how does our system compare with jurisdictions where the young offenders are dealt with solely under the criminal system?

Ms Scott: I can't give that analysis. The fact of the matter is that a lot of it depends on the judge you get. You may have a judge who happens to be Provincial Court criminal judge who used to be a defence counsel for young offenders who may be doing a wonderful job. I am making generalizations, but I think what we have is a process in which the court is willing to step back and say: "Wait a minute. Is this criminal? Is this something we need to waste the time and resources of this system with, or is this a family matter and can we deal with it?" That's the advantage that we have on the family side.

Ms Castrilli: So it's down to expertise, sensitivity and good common sense.

Ms Scott: Exactly.

Mr Kormos: Obviously, this is one of the themes that's appearing in the course of consultations regarding Bill 48. I get back to what we started with this morning with Ms MacNaughton and then with the last submitter and the response of Mr Skarica. I'm presuming or supposing that maybe the real conflict here — and this isn't always the case — is that in a criminal court the overriding principle in sentencing is tariff sentencing, whereas in a YO court it should be, I presume, more tailored sentencing.

I just note this most recent publication of Youth Update, in part by the Institute for the Study of Antisocial Behaviour in Youth. A recent study in Toronto, published in 1998, showed that 63.3% of incarcerated adolescents had two or more psychiatric disorders. Just incredible data. Substance abuse: marijuana 69.4%, but perhaps more alarmingly, for 57.1% of incarcerated YOs, street drugs: cocaine, crack, speed, LSD or PCP. The incidence of alcoholism, the incidence of depression — the data in this study are incredibly shocking. I'm not saying it wouldn't be replicated in an adult study, but it's very shocking in terms of the very special needs of YOs, of young offenders.

Ms Scott: I can also add that most of my clients I've ever had and the clients of my organization have some kind of learning or educational disability. I'm hazarding a guess, but I would say 90%. That's a real concern as well, because in the criminal stream you're not going to necessarily have the sensitivity or the awareness as to that.

Another concern which I didn't raise is that when you're having both the younger and the older youth now housed in holding cells of the one court, you're going to

then have some of the younger youth at risk as well, which is a concern.

Mr Kormos: The other comment this article makes is the renewed emphasis on punishment — the get-tough, boot camp, "we'll straighten these punks out" approach — as compared to a treatment model, in view of what they found vis-à-vis the level of psychiatric disorders, the frequency of psychiatric disorders. They don't draw the conclusions but simply state the facts. There are some pretty frightening conclusions, then, to be drawn about the mere get-tough approach and whether it's going to be effective at all in addressing — I wonder if it merely aggravates some of these disorders and leaves kids who are more disturbed.

Ms Scott: It may certainly do so. However, regardless of which stream they're in, the act is the same. What we don't want now are a lot of appeals from — you know, when the 12-year-old has had a harsher sentence from an adult-oriented judge. Are we going to now be tying up the appeal courts or are we going to be educating judges?

Mr Martiniuk: Thank you very much, Ms Scott, for your presentation here today. I should advise you, if you were not aware, that we presently have five Unified Family Courts, only two of which do take jurisdiction for young offenders, and in both cases, in London and Kingston, the judges have decided to phase them out early next year.

As a government we have to rely upon the expertise of the people involved, especially in our court system. I'd like to read to you two excerpts of letters directed to the Attorney General. The first is dated November 26, 1997, on the letterhead of the Honourable Patrick J. LeSage, Chief Justice of the Ontario Court of Justice:

"Further to the meeting of the heads of court today, I want to take this opportunity to confirm my view, previously stated in a letter to you dated July 3, 1997, that Young Offenders Act matters should be within the exclusive jurisdiction of the Provincial Division."

The second excerpt I'd like to read to you is from the Honourable Sidney B. Linden, Chief Judge of Ontario Court of Justice (Provincial Division), dated November 27, 1997, and also directed to Mr Harmick:

"I am writing to confirm the discussion at the heads of court meeting held this morning during which there was agreement among all present that the amendment to the Courts of Justice Act to accommodate the planned expansion of the (Unified) Family Court should remove concurrent young offender jurisdiction between the Provincial Division and the General Division," which is what we've done.

Are you a solicitor or a lawyer?

Ms Scott: Yes.

Mr Martiniuk: So we have basically the two chief justices of our two court systems in Ontario, in their opinion saying we should move it out of the Unified Family Court, and you disagree. Could you possibly tell me why?

Ms Scott: I would like to know their reasons. Unfortunately, the justices haven't indicated their rationale, and

that kind of leaves me in the dark because I can't respond. If, for example, it's because, "Oh, we don't want those kids in jeans in the hall" or "They might be disruptive," in my experience the only time security has ever had to be called is in a family court matter. I would like to know their reasons. No disrespect, but I would like to know the reasons.

I'm also curious in terms of some of the other judges, the two-hatters, who do specialize. If a pool were taken of judges, would we find judges who would like to maybe be involved in my alternative suggestion, the specialized youth court? That is something that wasn't addressed by the justices.

Ms Castrilli: On a point of order, Chair: If Mr Martiniuk is finished —

The Vice-Chair: You can use a little bit of his time. Sure you can.

Ms Castrilli: No, I don't want to cut into his time. If he has more questions, I can wait until the end.

Mr Martiniuk: No, I'm done.

Ms Castrilli: Chair, I wonder if Mr Martiniuk would make available to the committee the full text of the letters he read, since they obviously have great bearing on the discussions we're having here today.

The Vice-Chair: Mr Martiniuk, would you give that to the clerk?

Mr Martiniuk: Yes.

The Vice-Chair: Thank you very much.

Mr Kormos: On a point of order, Chair: I'm very disturbed by the parliamentary assistant for the Attorney General's comments. He creates the clear impression that all the consulting the government has wanted to do has been done, which indicates that this process today is of no relevance. The PA suggests that this is the consultation, this is the determination, and anybody who comes here is chopped liver unless they happen to agree with the bill. I find that a matter of great concern, that the PA would treat this process with disdain. People travelled some distance and went to great trouble to be here. The first submission —

The Vice-Chair: Mr Kormos, I don't think this is a point of order. However, it is a point of privilege. Nevertheless, I —

Mr Kormos: It's a matter of great concern.

The Vice-Chair: It is your interpretation and I understand your concern very much. I personally didn't get that impression from Mr Martiniuk.

Mr Kormos: It's not yours to get or not to get, because you're merely the Chair.

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Mr Martiniuk: Mr Chair, it certainly is mine. Mr Kormos again has made an unsubstantiated allegation, which is his manner, that I treat this committee process with disdain. I can assure you, Mr Kormos, that I have never acted in any way that would indicate my disdain for this process. I happen to believe in this process very fervently. For you to make that allegation, I take that as a personal affront.

Mr Kormos: Well, God bless, because it was meant as one.

Mr Martiniuk: Certain things are business, but this is not business; you have personally attacked me —

Mr Kormos: You bet your boots.

Mr Martiniuk: Mr Kormos, you continue to act in an unparliamentary manner.

Mr Kormos: I'll do it here, I'll do it out there.

Mr Martiniuk: You go right ahead.

Mr Kormos: You don't want to hear what these people have to say. You only want to hear them if they agree with you.

Mr Martiniuk: How dare you. How dare you.

Mr Kormos: I just did.

The Vice-Chair: Mr Kormos and Mr Martiniuk, I think we're into something that is not in the realm of this committee and I personally would like to move on to the next presenter. Ms Scott, thank you very much for your presentation. I, as the Chair of the committee, want to hear the next presenter.

CHERI STRATHDEE

The Vice-Chair: Ms Strathdee, welcome to the committee. You have 15 minutes in which to make your presentation. You can use all or a part of it. If there is any time remaining, it will up to the members of caucuses if they wish to ask any questions. You can begin any time.

Ms Cheri Strathdee: OK. One of the things I hope for is that, number one, I'll be listened to, and number two, that I will be believed. In order to accomplish that, I want everybody to know that I'm a published author. I was a journalist until I was crippled. I have in the package letters of recommendation and some examples of the incidents I'm talking about. I have others as well. I've kept a journal that can be searched by word or by subject. Plus, I've taped all the conversations that have occurred between lawyers and whoever from a journalistic point of view since 1991.

The reason I'm here today is to address the courts of justice. It's because I've not been granted my basic rights under the law, namely, due process of law. Additionally, my human rights as guaranteed by the Constitution have also been violated. My safety and security have been violated by my former spouse. The police, when I sought help, and seven lawyers, as I sought legal relief, did nothing. The results of abuse I've suffered in my home, as well as those institutions that are paid to protect the rights of Canadian citizens, are as follows.

Before I met my former spouse, I was very active. I spent my 20s getting my grade 13 and won an Ontario scholarship. I'd lost both my parents when I was 15, and I managed to pull myself out of it. I met my former spouse when I was in my 30s. I had a career, a future, a pension, a three-bedroom condo, fully furnished with high-quality furniture, a car and two fur coats.

My ex had a career also with a future. He lived in his mother's basement. He had few and old pieces of furniture. He had an older car. His first attempt at buying a

house failed, as he sold it at a loss two weeks after he purchased it.

We bought our first house, using my expertise as a real estate agent, and paid it off in seven years. I contributed financially, using every cent I made to keep the house running, and gardening, canning, coupon clipping, haircuts, sewing, car repairs and decorating were among some of the things I did to keep expenses down. I also paid for a cleaning service while I attended the University of Toronto. My ex put his money in various forms of investments and pensions and only contributed \$35 a week for total household expenses.

The same money, saving and contributions were made by myself when we purchased our second home. Additionally, I was forced to sell my condo, but was not allowed to keep the money for myself even though I had acquired it before I met my ex. Additionally, I won approximately \$100,000 in contests, including two cars. I was defrauded of the Bronco by my ex. That letter states that I won the car. I also won \$25,000 cash from Beaver Lumber, which was used entirely to pay off the mortgage of the second house. I also won a Caribbean cruise for my spouse's aging parents, when their own children would not respond to sending them on a trip. They were 74 by that time.

When my ex became enraged by them receiving the trip, the abuse from the ex became pronounced and extreme. He'd been having affairs throughout the term of being married, but now the verbal abuse turned violent. When IBM started downsizing, my ex's diagnosed obsessive-compulsive behaviour and panic attacks became worse. He would jump me without warning and punch me and then run upstairs. Another favourite was to twist my arm that had been previously broken. He threatened me with knives, carved a bat out of solid oak, tripped me and began following me when I sought relief from his torture.

When I was finally hospitalized with a deep vein thrombosis, from when he kicked me in the leg, I went to the police station to get him charged, hoping it would wake him up so he would have to get the psychiatric help he needed. The police did nothing. The attacks continued until I was permanently injured with a herniated disk. I was in constant pain from severe, acute and chronic injuries that resulted from my ex's abuse. Then I was diagnosed with secondary fibromyalgia, the result of my injuries from abuse. I was unable to get out of bed, sit or walk for any length of time.

While hospitalized, then crippled, my ex went to court to get petition of sale of the matrimonial home, although the home was not built according to Ontario building code. Because I was so sick and in pain, the first legal aid lawyer said I was stupid and would be easy to get rid of. I got that on tape. I fired him. The second legal aid lawyer at the time of the court date was not the lawyer of record. I was not allowed in the court to defend myself, although I was technically representing myself. I wanted to explain to the judge that the house wasn't built according to Ontario building code standards so they couldn't sell it and perpetrate a fraud on the courts and the new purchaser.

This lawyer quit a few months later because he could not handle the crazy-making demands of my ex. That letter is included in this package. The third lawyer accepted legal aid, then changed his mind. He screamed at me about my financial planner. I have that telephone conversation taped. He charged me for unprovided service during discoveries that did not happen. He changed the wording of the order to go limiting my support without my consent or knowledge. Then he wouldn't release my files when I fired him. There are many other violations as well.

Lawyer number four was embroiled in his own separation and bad judgment of buying an over-priced property and took his hate out on me. He agreed to go to Small Claims Court to get my files from the previous lawyer and then he sent his secretary instead. He took my emergency moving fund, which was held in a separate account for that purpose when I was forced to vacate the premise I was living in. He would not advise me of my legal rights. In fact, he wouldn't talk to me at all. There were many more things he did wrong as well.

Both lawyers five and seven accepted my legal aid certificate and then sat on it while doing nothing and demanding that I give them a retainer instead.

Lawyer number five also sabotaged my motion, which I prepared myself, by saying he would take it over when it went to court. That's this document. I took it to him because I wanted to make sure I'd done it right. He said it was right, it was correct, everything was factual, that I had done it perfectly and he would represent me in court. Then what happened is that he didn't confirm the court date and he didn't show up for court, so nothing happened.

I've been defrauded of approximately \$65,000 by these unscrupulous lawyers who did not deliver what I and the legal aid plan paid for. I have had to use all the balance of the proceeds of the matrimonial home, because my spouse quit his job so he did not have to support me. At that time I was told I could no longer attend computer courses that were free at a local high school because my arm could not take any more than two courses without swelling and becoming so painful that I couldn't walk.

1130

When my ex quit his job, he took all our assets. They were around \$600,000 at the time. Then he was granted a government grant of \$4,500 for him to take an Oracle computer course. He has since taken another job at \$70,000 and has presently over \$1 million. On the other hand, I'm crippled for life, in constant pain. I've lost my home, my car, my furs, my pension. I can't get medical insurance because I'm too sick. I can't go out for any length of time because of the pain. I've lost many skills and activities I used to do. As I found what I couldn't do, I listed them.

As a result of all the above, I'm seeking the help of the courts of justice for what has happened to me. I don't believe the Legal Aid Act and its provisions protects the rights of women and children. There is no accountability of the lawyers who accept legal aid certificates. There's no follow-up when a complaint is made and there's no schedule of support for spouses, especially those who have

been abused and are unable to work. A schedule similar to that for child support should be incorporated into the courts of justice, if that's the applicable place for it.

Upon application to the courts for separation and divorce, the assets, especially the home, pensions and investments, should be frozen until an equitable split has been determined. If these steps are not incorporated, then the government will have to continue to pay an abusive man's responsibilities. As the baby boomers age, the government is afraid that there will not be enough pension money for all of that segment as the population expands. At the same time, the number of abused, crippled women will also continue to expand. The government, by not adopting those tough policies on wife abuse, is ensuring financial losses to society via lost income taxes and all the costs associated with the rehabilitation of abuse victims. These savings also could be passed down to the taxpayers.

My last statement is, how does it feel to pay for another man's responsibilities? Because that's what everybody here is doing in their income taxes.

I have tried to seek other help as well. As shown in the last piece of my fact sheet, I wrote to the legal aid and the law society about lawyers number one and number four in particular, receiving a reply that the complaint was not valid and that those lawyers denied any wrongdoing. Help and further investigation were denied.

In 1995, I wrote to the Women's Legal Education and Action Fund. There was no help because it wasn't a precedent-setting case. Everybody was having this problem.

In 1996, I wrote a full report describing the fraud of the Bronco. I took it to the police and was treated very badly. I insisted on seeing the police from the fraud squad. The officer took the report and to date has not contacted me or dealt with the matter. I waited that long to contact the police because I believed the lawyers would settle the matter of the ownership of the Bronco.

In 1996, the police were unwilling to help with items stolen by my ex-landlord. I lost \$4,000 of \$17,000 worth of belongings. I had these things inventoried because my other half is obsessive-compulsive. He photographed everything and wrote it all down.

I also wrote to the minister responsible for women's affairs and was told they could not help. They sent the letter to the Attorney General's office and the Solicitor General's office. Both replied saying they couldn't help.

I've also called various other agencies to get help: legal, medical, financial or housing. All that was done was that I was referred on to other agencies and told there was no help available.

Now I'm facing a life of — I worked hard to try and stay off the streets, to get myself an education, to get myself into a position where I would be a contributing member of society. Because of being beaten up and then having these people, whom you guys are paying to service the public, not do their job, now I'm crippled for life. I'm going to be around for another 30 years, and with every step I take, I'm going to remember who beat me up, who helped me and what happened. That's all I have to say.

The Vice-Chair: Thank you, Ms Strathdee. We have one and a half minutes remaining, which doesn't allow for much. Does one member of one the caucuses wish to make a comment?

Mr Kormos: In one and a half minutes, very quickly: Who's Delores Hill?

Ms Strathdee: That's my maiden name. My name is Cheri Delores Marie Hill Strathdee, but it was too big to put it all in.

Mr Kormos: Fair enough. You've got letters here from Laitman, a sole practitioner who took your file in July and then in September dumped it.

Ms Strathdee: Yes.

Mr Kormos: Here's a guy who complains that he's a sole practitioner and can't handle your case —

Ms Strathdee: That's right.

Mr Kormos: But he's got two offices, one in Toronto and one in Stouffville.

Ms Strathdee: Yes.

Mr Kormos: You complained about him?

Ms Strathdee: Yes.

Mr Kormos: What did the law society do?

Ms Strathdee: Nothing.

Mr Kormos: They dismissed your complaint?

Ms Strathdee: Yes. The thing is, for instance, the \$5,000 that was taken from —

Mr Kormos: No, no, no. I just find it interesting. He took the file on. He says he's a sole practitioner and can't handle it, but he has two offices. I just find that interesting.

Ms Strathdee: I can prove the \$5,000 was taken by bank statements that I —

Mr Kormos: You've been jerked around from day one. I have no hesitation in saying that to you. The problem is that you've got to find somebody in a law office who's going to wrap it up and complete it for you. Is that a fair comment?

Ms Strathdee: I hope somebody will. One of the reasons why this here says on the top, "abstract first draft" — this here has more details. I have the tapes to back up what I'm saying, plus full documentation that I can find at an instant. Because I've been stuck in bed, for years I've been inputting the data in the computer when I can manage it, so I have all the letters and everything documented. I have been offered the chance of possibly putting this into book form about the abuse in the home and the abuse of the system afterwards.

Mr Kormos: Ms Strathdee, Mr Martiniuk is the parliamentary assistant to the Attorney General. If you wait and see him at 11:50 when the committee recesses, he's second banana to the top dog in the province. He may be able to help you with counsel. I suggest you talk to him.

The Vice-Chair: Thank you, Mr Kormos. Thank you, Ms Strathdee. We must move on to the next presenter.

Ms Strathdee: Thank you very much for listening to me.

CANADIAN BAR ASSOCIATION —
ONTARIO

The Vice-Chair: The next presenters are Judith Huddart and Joanne Stewart. Welcome, ladies. You have 15 minutes for your presentation. You can use all or part of it; if there's any time remaining, the members of caucus will ask questions.

Ms Judith Huddart: Thank you. I don't think we're going to make a lengthy submission. I'm Judith Huddart. I'm the chair of the Canadian Bar Association — Ontario, family law section. Joanne is on the executive of that association and has given Bill 48 a thorough review. It seems to us to be more or less administrative in nature, but I did want to say that it's important to our section that the unification of the family courts continue, so we're supportive of this bill, which allows that to happen.

We get a lot of feedback from our members, the family law lawyers. We also get feedback from the public. It's amazing how many phone calls I get from people concerned about the court system. It seems to me that proceeding with the unification of the family law courts can only help: can help our clients, can help those people who are unrepresented. It's one-stop shopping, which is much better than what we have now, where people can start an action in provincial court and then the other spouse can come along and start a divorce proceeding and all of a sudden you're bumped up to General Division. You've got one action started and all of a sudden you're into another one and the first one goes by the board. So that's important.

It's also important to recognize the facilities that have been put in place in family courts. There are mediation facilities which aren't normally available in General Division court. There is more access to the legal aid duty counsel. Duty counsel is not available at all in General Division. It is available in Provincial Division. There is case management which has been set up, which means that normally you have one judge who keeps track of your file and often hears the case from beginning to end. Sometimes that does switch, but I think that also allows somebody to have a handle on what's happening, so if a spouse is abusing the system there's a better chance that that judge is going to see that and be able to deal with it, rather than shopping around; then different judges get it and all of a sudden it's a whole different story and the history of it isn't there before the judge.

There are a lot of plus things that we think can happen through a Unified Family Court, and on that basis we are here to support it.

I don't know if I've missed anything, Joanne. Joanne will answer questions as well.

1140

Ms Joanne Stewart: I think there are only two more things. One is that in terms of the provincial court and the Unified Family Court, the clerical service that's available to the general public is far more helpful many times than what's available in the General Division. If the family court takes on some of the provincial court and Unified

Family Court clerical people and that kind of service, it would help a lot of the public, because now there are many unrepresented litigants for lots of reasons. The main one is money. That benefit from the provincial court and Unified Family Court could carry over.

Also, I notice that in terms of Bill 48, the judges are rotating in and out, as they do now in the General Division. I think that's a two-edged sword. On the one hand, it's good to have fresh blood; on the other hand, in the Unified Family Court and provincial court, family division, the judges are there because they want to be. They understand the law, the interpretation of the law, the issues; they're prepared to deal with the client.

In the family court — while the rotation system is a good one because the judges seem to need breathers from family law, on the other hand I think it would be difficult for the public if judges are put into that system when they don't want to be there. From the public's perspective, if the judge is not interested, what the people get and the lawyers get is hands up and that's the end of it. The rotation is good, but I don't know if you can word it so there's a mandate so only those who really want to go have to go.

That finishes our comments in terms of the CBAO.

The Vice-Chair: Thank you for your presentation. We have 11 minutes left, three and a half minutes per caucus. We'll begin with the government caucus.

Mr Martiniuk: In regard to the background, you both practise in Toronto?

Ms Huddart: That's correct.

Ms Stewart: I do.

Ms Huddart: The members of our executive and our association of course are throughout Ontario, but we personally practise in Toronto, yes.

Mr Martiniuk: We've had some discussion in regard to the rotation of judges in the eventuality. Now, you're Toronto-based, and that's why I asked the question. In the areas outside of Toronto, we don't have 10 judges perhaps to draw on in a particular matter in civil litigation. We might have one or two in some of the smaller county benches. What's your opinion about providing the Chief Justice with the power to inject non-specialists or people who do not exclusively do family court work in a Unified Family Court in certain circumstances?

Ms Huddart: We'll both probably want to respond to this, because we both have our own experiences. I think it really depends on who the person is. We've certainly had judges who have come into General Division who have not had a strong family background who have been great. We've also had judges come in who have been problematic. Now, those judges don't usually last very long, and oftentimes they're not there because they want to be; they're there because they're going through the rotation, which is something of what Joanne was saying earlier. It is hard to determine in some cases.

Ms Stewart: I'm originally from New Brunswick and I practised there for a little while. I've been practising in Toronto for nearly 16 years. Because of the diversity in the population in Toronto, there is a huge diversity in the way in which matrimonial cases have to be handled,

driven by the people's backgrounds, the amount of money they have, and out of the backgrounds and the money arise the legal issues. I think there is in Toronto a big segment of the population with relatively simple legal issues that aren't so simple when they're complicated by the emotional things which are, from our perspective, not irrelevant, but almost irrelevant.

If there is a panel of judges who are equipped to deal with people and they're prepared to deal with the people — particularly those people who now are, say, in provincial court. A lot of the people are unrepresented; they don't have lawyers or they're in and out with the lawyers because they can't afford the fees. They wish it was like OHIP, that we got paid by the government. If you have an insurance lawyer who sits as a family law judge with a person who's unrepresented, all they want to do is put their heads in their briefcase because they don't know what to say. They can't stand the crying. They don't want the yelling. They don't know what to do.

From my perspective — and I don't know if I speak for the CBAO or not — it's really imperative to have at least a panel of judges who are really prepared to deal with the people, because when you unite the courts, the people are going to be there, and it's not necessarily Judy and I with clients who, by and large, pay us and who have more sophisticated issues. They're actually there for legal reasons because we can't solve the problems ourselves and we can't get a mediator to solve the problems, so we go to the court because we're stuck. It's really the last resort.

But we represent maybe 10% of the population — maybe. The other groups are there for all kinds of issues that really require a special kind of judge who's not necessarily acting like a judge, because it's not a legal problem. People need to hear: "Calm down. You can go here. I can send you there." Again, a great insurance lawyer who practised for 25 years won't want to do it, can't do it, is not trained to do it, and I think it's a problem.

Ms Huddart: I guess that will depend on — if it's left as a discretionary matter, it's a question of how well that discretion is exercised. That can be problematic, although I suppose the other side of that is that if you start arbitrarily saying who's going to do it, you could cut out fine judges as well. There are family law lawyers, I guess we all can say, who aren't wonderful with their clients, and they could be appointed as a judge. They may have the experience per se, but they may not be the right person for the job either.

The Vice-Chair: We have to move on now to the Liberal caucus.

Ms Castrilli: Thanks very much for being here. You're our last presenters and I have a whole host of questions.

I want to first say as a practitioner that I have great admiration for the family bar. Obviously, some cases have slipped through the cracks, like Ms Strathdee's, but your segment of the profession is certainly the most hard-worked, having to deal with not only complex issues but issues that involve emotions and trauma, which make it even more complicated.

I want to raise an issue that appears to be a conflict. I don't know if you were here earlier, but Mr Martiniuk, the parliamentary assistant, introduced a series of letters which ostensibly support the government's position that young offenders should be in the Provincial Court jurisdiction. Right now, as you know, it's a concurrent jurisdiction. I'm aware that that's not necessarily the position of judges in family court. In fact, one of the letters Mr Martiniuk presented — and this is over the signature of Judge Linden — goes on to say, "I'm aware that the president of the Ontario Family Law Judges Association wrote to the Minister of Justice of Canada expressing the association's view that young offender jurisdiction should be included [exclusively] in the Unified Family Court."

We've now had conflicting views here, and I'm really wondering where the family bar is on this issue. We've heard it should stay concurrent, that it should be in family court, that it should be solely in the criminal courts. Do you have views on that?

Ms Huddart: We're looking a little concerned because I have to tell you, quite honestly, that it has not been an issue that has been raised by any of the members of our section.

I realize that is a change, but it is my belief that generally the lawyers who practise family law do not necessarily do young offenders. That tends to be kind of peripherally criminal, although I understand there are a lot of family law issues that come out of that. I think that's why we haven't had a lot of input on it. It tends to be over here, seen more as a criminal matter, albeit not in the same sense as somebody who's charged with the offences under the Criminal Code. I am not helpful.

Ms Stewart: It's helpful in the sense that there are a lot of people who go to these section meetings of the CBAO, and the executive is huge. It's so peripheral we don't even think about it, because to us it's criminal law. I can't think of anybody who does it. We just don't. It's criminal lawyers.

Ms Huddart: There are a few, but they really are few.

Ms Castrilli: I'm curious, because the comment was made by the president of the Ontario Family Law Judges Association. I have to take him at his word and take it very seriously.

Ms Huddart: From a judge's perspective, they're getting those cases in there. You're asking us as lawyers whether those are the cases we would carry. The criminal bar may have more input on that, in fact, if they're doing more of those cases, as to whether they have strong feelings. I don't know if they've made any submissions at all on that.

Ms Castrilli: But you would agree that it's important that whatever rotation takes place — and some rotation is necessary and important — there must be experience and sensitivity to the issues; that you couldn't put, as you said, an insurance lawyer —

Ms Stewart: I think that way.

Ms Huddart: We don't want to blackball insurance lawyers.

Ms Stewart: No, no. That was just —

Ms Huddart: I think what we're trying to say is that a background in conciliation and an ability to deal with people from various walks of life whose problems aren't strictly legal but are often entangled with emotional issues — those are the criteria we need. Certainly family lawyers are generally expected to have that. We don't always have it, but I think that would be the primary emphasis we'd want to see, and certainly training. I know there will be training provided, and I think there should be more emphasis on training of judges and perhaps lawyers, certainly lawyers who are going to be taking on those roles, particularly mediation skills, alternative dispute resolution skills. That is happening now already with judges and I think it needs to happen more, particularly in family law.

Mr Kormos: You are the last submission. It's interesting that we're doing clause-by-clause this afternoon, so I suppose if there are any real amendments, they're going to have to be generated by the government in response because of the short time frame. It's been interesting.

Just by way of note, the Ontario Association of Children's Aid Societies again raises concerns about this business of YO phase 1 being transferred over to what I colloquially call the provincial court, criminal division, which isn't the proper name for it any more. All that does is attest to my age.

I can't speak to you without being cognizant of Ms Strathee being here and the submissions she made. Let me just throw out this real quick. I got a call from a couple in London family court — no counsel. They believed the line that you don't need lawyers to go to family court. But here's a young couple: There are assault allegations, there's fear on the part of the wife, and here they're sitting in court all day waiting for a motion to be heard, almost side by side — very painful, quite frankly, for the wife and for her spouse. Both of them don't want to be near each other. They get to 4:30 and, bingo, the matter's adjourned because the court's simply run out of time. And that's not the only call I've gotten.

I support the Unified Family Court. I'm from Niagara. Hamilton's had a wonderful experience and Niagara wants one. But the other one is the adequacy of courtrooms and judges.

Ms Huddart: That's true no matter what court it is. That's now. That's a real problem.

Mr Kormos: Yes, exactly.

Ms Huddart: In terms of how you design the facilities — I guess we've always felt in the family law section that courts are there for the people, judges are there for the people, and in terms of scheduling, a judge's schedule should fit the people who are there, not the other way around. That impacts on us and our clients dramatically, because not only are our clients sitting there almost side by side; we're sitting there and we can't do anything else while we're there.

Mr Kormos: Quite right.

Ms Huddart: That means our client is going ka-ching, ka-ching, ka-ching every time we wait an hour or two hours or a day to be heard. I don't know that we're going

to solve that problem, but that's something that should be resolved.

Mr Kormos: I just wanted to highlight that, that UFC — again, God bless, but all the UFC principles in the world, without adequacy of courtrooms and judges, are for naught.

Ms Huddart: Absolutely.

Mr Kormos: This may be totally unfair, but Ms Strathee has to be addressed one way or another. You heard what she had to say. Five, six lawyers now, however many. Legal aid clearly isn't going to accommodate her because legal aid isn't going to pay enough for a lawyer to tackle her file. Her file has grown and grown and grown, and she's become obsessed with it, right? No disrespect, but you have, like so many other people, and understandably so. It's become her life. She's been reduced from a middle-class lifestyle to living on welfare in a one-room apartment.

With respect to Ms Castrilli, I have talked to far too many Ms Strathees here in Toronto and in my constituency office. Where does Ms Strathee go to get this matter resolved? You understand that she has to get it resolved or else she's never going to carry on with her life, right? You know that. Where does she go to get this resolved once and for all, for better or for worse?

Ms Huddart: With the greatest of respect, I don't think that's —

The Vice-Chair: Mr Kormos, unfortunately the response is going to have to be made to Ms Strathee afterwards. You have used up all your time.

We must adjourn — recess, I should say. Under the subcommittee report, the amendments must be tabled with the clerk of the committee by 1:30 pm today. Ms Castrilli and Mr Kormos, you can present your amendments to the clerk by 1:30. The government, of course, can present its amendments.

We will recess now and return at 3:30 for clause-by-clause.

The committee recessed from 1155 to 1531.

The Vice-Chair: We will get started.

Mr Martiniuk: Mr Chair, on a point of order: It is traditional to have all three parties present when we're considering a bill, and I would suggest maybe another five minutes so a member from the third party can be present before we start.

The Vice-Chair: So you would like to recess for five minutes?

Mr Martiniuk: Yes.

The Vice-Chair: Is everyone in agreement? Agreed. We'll recess until 3:40.

The committee recessed from 1532 to 1534.

The Vice-Chair: We'll call the meeting to order.

Mr Kormos: It's about time, Chair.

The Vice-Chair: Mr Kormos, if you had been here on time, we would have got started on time.

Mr Kormos: I got here exactly at 3:30.

The Vice-Chair: Your watch is slow. I guess that would indicate why the NDP is no longer in government.

Interjections.

The Vice-Chair: An editorial comment like that from the Chair is not permitted, and I will refrain from doing so ever again.

Mr Kormos: Just apologize.

The Vice-Chair: I apologize, Mr Kormos.

Mr Martiniuk: So that's why the NDP isn't in power.

Mr Kormos: It's the watches.

The Vice-Chair: We're here to do clause-by-clause. I guess we should start with section 1. That's usually a good place to start.

Any comment on section 1? All in favour? Carried.

Section 2: There being no amendments, all in favour? Carried.

Section 3: Any discussion? All in favour? Carried.

Section 4, the short title of the act: Any discussion? Ms Castrilli.

Ms Castrilli: No, no. I was getting ready for the vote, Chair.

The Vice-Chair: Are you in favour or is there discussion?

Mr Kormos: Let's have some debate. I chose section 4 because it's the short title of the act, until we get into the schedules of the act.

Look, I suspect this whole exercise is going to be rather brief. My only disappointment is the failure of the government to respond to the concerns raised by several presenters this morning about the elimination of exclusivity of jurisdiction over phase 1 young offenders by the family court and in fact the transfer of jurisdiction over to what I colloquially refer to as the provincial court, criminal division.

The PA gave us the letters from Judge LeSage and Judge Linden. Again, we don't know the background to those letters, but the letters seem to support Bill 48, specifically what it does in terms of relinquishing family court of responsibility for phase 1 YOs. So what? So both of them take that position, two points of view; good for them. It appears that the participants in those meetings they refer to held the same view, and I say good for them. But we heard from practitioners today, and if you reflected on the comments of, among others, Mrs Boyd on second reading of this, she expressed concerns about that then.

The people who spoke here today, including the Ontario Association of Children's Aid Societies, which filed a written submission, have a point of view that warrants more than a cursory response by the government. I just find it very disappointing that this is going to pass without there having been a more thorough consideration. As a matter of fact, I'm glad Mr Skarica got here today. In his response to the one lawyer who appeared, the lawyer from Muskoka, he made it quite clear that in terms of the process a YO trial is a criminal trial, but that's a given. At the end of the day, though, what these people were talking about when they expressed concern about the relinquishing of this role by the family court was not so much in terms of the trial work but in terms of the sentencing work, where they suggested that a degree of specialization, especially the specialization that's consistent with the family court, is probably preferable in terms of sentencing

convicted young offenders. That's not going to be addressed, obviously, by the way of the government in any amendments, so we're going to be looking at a situation where the historical criminal courts are going to have exclusive jurisdiction — again, as I understand it; the PA may want to correct me — over young offenders, both phase 2 and phase 1, and phase 1 has been the subject matter of attention.

I just want to express concern about that. It's unfortunate. I think there are ways that it could have been addressed, and appreciating that there is but one day for hearings on this matter, it's regrettable that the government wouldn't take a little more time perhaps to reflect on that more thoroughly.

The other issue is the issue of the roster of judges and the power of the Chief Judge to move them in and out. The government has an amendment that, when we get to it, purports to respond to the concerns raised about that.

1540

Mr Martiniuk: No, not ours.

Mr Kormos: I'm sorry. The Liberal Party has an amendment. I read these quickly. They were given to us in the House.

Interjection.

Mr Kormos: Don't worry about it. I'll give credit where credit is due.

If you want to talk about Liberals, I should take a shot at them, because it all comes down to the federal government's appointing sufficient county court judges — I call them county court judges — sufficient federally appointed judges to make this work. I'll take that shot at the Liberals before the Tories do. As well, though —

Ms Castrilli: I thought we were into clause-by-clause.

Mr Kormos: No. We're into section 4, the short title.

As well, you heard the interesting comment — again, we had so little time with so few people — by the participants here from the Canadian Bar Association, family law section. They said at the end of the day you can have Unified Family Courts and expansion all over the place, but if you don't have sufficient judges and sufficient courtrooms, the concept will be laudable and where people do have access to those courts, it will certainly be more successful, but it's not going to work for all the litigants.

I recited to you, again anecdotally, a case out of London, as it happened, where family litigants had to sit beside each other in a packed courtroom all day waiting for a motion for access to be heard, and then at 4:30 there was still stuff left on the list, and the judge presiding over that court — after these people enduring each other all day, with great stress to each other — sent them home and told them to come back in a couple more weeks. How many times that will repeat itself, who knows?

I just want to indicate now — the problem is if I wait until the end to make these comments, there may not be sufficient time; far better that I make them now, because obviously we're going to go through this relatively quickly — at the end of the day it's still a matter of resources being allocated or provided to these courts.

Then, as well, I have this concern. The young woman from Welch law firm, Ms MacNaughton, spoke about Niagara region, and there have already been sufficient amendments so that Niagara region is effectively one judicial district for the purpose of courts sharing each other's bailiwicks, Niagara north and Niagara south, although in practice St Catharines is a county seat and Welland is a county seat. If those courts are forced into merger by way of a Unified Family Court, granted there'll be a Unified Family Court, but there won't be access by people from the southern level of the region to the northern level if it happens to be in St Catharines, or vice versa, from the northern level down to Welland county, to the Welland seat, if that happens to be the location of a Unified Family Court.

Again, that speaks to the number of judges available, for which the province is very dependent upon the federal government. But don't forget, we heard one lawyer express enthusiasm about these appointments because a federally appointed judge makes a good 20 to 25 grand a year more than a provincially appointed judge, so there are a whole lot of family court judges very anxious to get on the short list of people appointed to these Unified Family Courts by the federal government. Not only is it reflected in their salaries but also in a far more attractive pension available to them. That's the reality of it.

I just wanted to make those observations and express some regret that we didn't have a more thorough consideration of the concern about YOs again, particularly sentencing taking place in criminal courts, and second, about the ability of the senior judge to move people in and out willy-nilly, which seems to defeat the purpose of the Unified Family Court in some respects.

The Vice-Chair: Responses? More discussion? Then I'll call the question. All in favour? Opposed, if any? Carried.

We'll move to schedule A, part I, section 1. Any discussion? I'll call the question. All in favour? Opposed, if any? Carried.

Section 2: Any discussion? I'll call the motion. All in favour? Opposed, if any? Carried.

Mr Martiniuk: If I may move an amendment, Mr Chair, I move that schedule A to the bill be amended by adding the following section:

"2.1 Subsection 18(2) of the act is amended by striking out 'the associate chief justices' where it appears and substituting 'the associate chief justice.'"

The Vice-Chair: You've heard the amendment. All in favour? Opposed, if any? Carried.

We have a Liberal amendment to section 3. Ms Castrilli, do you wish to move the amendment?

Ms Castrilli: I listened very carefully to what Mr Kormos had to say. I thought it would be more appropriate to leave our comments to the relevant sections rather than to a general introduction.

This is one of the areas where we have a great deal of concern, so I'd like to move that subsection 3(2) of the schedule A to the bill be struck out and the following substituted:

"(2) Subsections 21.2(4), (5) and (6) of the act are repealed and the following substituted:

"Temporary assignments

"(4) The Chief Justice of the Ontario Court may, from time to time, temporarily assign a judge referred to in clause (1)(d) or (e) to hear matters outside the jurisdiction of the family court.

"Condition of assignment

"(5) The Chief Justice of the Ontario Court may not assign judges of the General Division to the family court under clause (1)(f) unless he or she is satisfied that they have had experience in the area of family law."

I'd like to explain that. In order to understand this amendment you actually have to go back to the Courts of Justice Act and you'll find that under clause (1)(f) it in fact talks generally about the appointment of judges and the moving of judges into the family division, so that this condition of assignment is not intended only for temporary assignments but whatever rotation the judges may want to do on a regular basis. It's not just for matters which are outside the jurisdiction of the family court. I make that clear because it's a much broader amendment.

The reason for that is we heard this morning in the various presentations, and certainly it's an issue that we raised in the Legislature before, that in order for a Unified Family Court to work well, you have to have individuals in the family court who are experienced in mediation, who are experienced in family law litigation and who have an understanding of the complexities of the law. It doesn't involve just the Family Law Act, it's a whole series of statutes that are involved and they're really quite complex.

Add to that the fact that there are issues that are not just tinged but fraught with trauma and emotion for the people going through it. Add to that as well the fact that at the moment in our court system the vast majority of litigants in family court are unrepresented. You absolutely must have judges who understand what's happening. You cannot have someone who comes from an entirely different discipline, a corporate lawyer, who suddenly comes in — with all due respect to corporate lawyers; I myself was one at one time — and expect that person to have the sensitivity and the understanding that's required in that particular instance. It's absolutely critical that that be case, and we've heard that today from practitioners, we've heard it in spades.

So it seems to me that this is a very reasonable amendment. It isn't intended to fetter the court, as the parliamentary assistant will tell us, but it is intended to give some guidelines that you cannot just put anybody with a law degree in situations such as this. There are many problems in the justice system and we cannot compound the situation by having judges who may not have all of the skills necessary in a very critical area of the law.

1550

Mr Kormos: I had misread it. I thought, quite frankly, this was a government motion, which is why I was prepared to crap all over it. But in view of —

The Vice-Chair: But you've changed your mind?

Mr Kormos: No, no. I'll still, in the interests of consistency, dump all over it again. Unfortunately, this indicates a misunderstanding, in my submission, of the problems spoken to by presenters. This says, "unless he or she is satisfied that they have had experience in the area of family law." I have no idea what that means and I don't think that the Chief Justice will understand what it means.

Does it mean that they've undergone a divorce or they've been a litigant? Does it mean that they've practised family law? Does it mean that they've previously been acting in the role of judiciary in a family court? That's the weakness here. That's not the point.

I understand that there will be people — and I hope there will be people — appointed to the Unified Family Court, obviously not by way of the reappointment of provincial family court judges but new appointments, who have no background in family law whatsoever. I anticipate that. In my view, it's no more critical that a judge in a Unified Family Court have previous family law experience as a lawyer, for instance, than it is that a criminal judge has previous experience as a criminal lawyer. I think all of us have seen some excellent appointments to any number of areas on the bench by people who may not have had any of that experience in their former practice but who display great skill on the bench once there. Oftentimes there is a comment about bringing a fresh view to things, a fresh look. Sometimes it's preferable that people, for instance, appointed to the criminal court have no extensive criminal background.

Mr John R. Baird (Nepean): Background? They'd better have experience.

Mr Kormos: That would probably be useful. I guess if Mr Vankoughnet were a lawyer, there'd be any number of functions he could perform with his expertise and talents. I trust that's what you're referring to, Mr Baird. Mr Vankoughnet will appreciate the reference and your support of him. I don't think he's a lawyer; I'm not sure.

In any event, it's not about whether or not someone's had previous experience. I think the issue is really about whether somebody is prepared to serve in that court and develop (1) the expertise, and (2) it's imperative that these judges be in that court for a considerable period of time, and I'm not talking about 20 years, 30 years. I'm talking about that they be there not just for three months, four months at a time, so that they can get a feel for what's happening to cases, how they can track cases as they go through the courts.

Let me tell you what happens. You're involved in family litigation, not so much in small-town Ontario, but there the family court judges are overburdened and so are the old county court judges. You appear in front of Judge A one time. That judge grants an adjournment on the request of somebody or one party or another. The next time you're in court you appear in front of a different judge. That judge then hears another application, another motion on the part of a certain lawyer. Then you appear again, you're in front of a third judge. That judge makes an interim order and then the order may be allegedly breached and then you appear in front of a fourth judge.

So nobody is carrying this thing from beginning to end, and that's part of the problem and that's part of the appeal of Unified Family Courts, in that there's more capacity for a single judge to be monitoring the progress of a case through the court.

I think that's really what, at the end of the day, part of the concern is about judges flowing in and out, being rotated through this court. You want to avoid the same old story of what's happening now, especially in bigger cities: I suppose in London, Toronto, Ottawa. You know what I'm talking about. You take your pick, it's the luck of the draw that day. You could end up with a judge who is totally disinterested, who is there on a temporary placement, who is filling in for somebody else, who doesn't want to — what's the language? — become seized of a matter. It might be a two- or three-day matter and that judge knows that he or she is going to be out of there in a week's time or is supposed to be out of there in a week's time, so he doesn't want to start hearing the trial of an issue.

That's the problem and part of the concern about judges flowing in and out is judges who haven't had an opportunity to develop this reservoir of skills and familiarity and perhaps even sensitivity.

The other part is judges who can be there so they can understand what's going on in those courts and come to grips with it. You guys talk about case management all the time. You don't need a case manager and all sorts of bureaucracy to effect that. You need judges staying in one place so they can see what's happening. I think judges are quite capable of giving effect to that case management.

I'll still support this amendment. I know that Ms Castrilli ran to her office at lunch time to write this out, to draft it and to type it up.

Ms Castrilli: I didn't.

Mr Kormos: I'm sure she did. She's that kind of conscientious person. I'm sure she ran back to her office, sat down at that old IBM Selectric and punched this out.

I understand why it doesn't quite hit the nail on the head, but I don't think it's just a matter of having experience in a particular area. It's a matter of their permanence in that position and the information and the skills and the sensitivities they acquire as a result of their permanence there. That's why I'm concerned about the wording. It may misrepresent the real concern here, one which the government hasn't responded to. That's why I'm going to support the motion. While this amendment may not address the issue dead on, the government hasn't addressed it at all and that causes me some concern.

Ms Castrilli: I agree with the thrust of Mr Kormos's comments. I must say that in the fullness of time we would have been able to present a motion that addressed more concerns than just this. This is incomplete, there's no question. I think legislative counsel did everything they could, given that we had less than an hour to prepare amendments and get them filed. It may be incomplete but I think the gist of it is there and it's important.

I'd just like, though, to remind Mr Kormos that his own party in the Legislature talked about how very important

experience in family law was and I'm not sure that just having the commitment to it is enough. I'd refer you to Hansard and what Mrs Boyd said about the fact that the whole purpose behind the family law court is to make very sensitive decisions and what you need is "people who have a thorough understanding of family law."

I think we start off from the same premise and I agree with you that this should have been a fuller motion, but this is what's before us. I don't think we should ignore the reality that this is a very specialized area of the law and you do need some competence. I would have loved to have put more motions before you which amplified some of the concerns we have today.

Mr Kormos: I hear what Ms Castrilli is saying and I know full well what Ms Boyd feels about this. Fortunately, in my party, and certainly in my position, we don't go around echoing each other, notwithstanding how hollow that echoing may begin to sound as it comes from other opposition parties.

I'm not in accord with Ms Boyd in that regard. She's not a member of the committee; I am. I've made reference to her point of view several times here today and I'm prepared to do that. Quite frankly, I disagree with Ms Boyd in that very specific area. I've had experience in the courts and with judges which I can use to support my position that other people may not have had.

The Vice-Chair: Further discussion? Shall the motion carry? All in favour? All opposed? The motion is defeated.

Shall section 3 carry? All in favour? All opposed? Carried.

The Liberals have presented an amendment which is not an approved amendment.

Ms Castrilli: It wasn't intended to be an amendment, Chair.

1600

The Vice-Chair: Is there any discussion on section 4?

Ms Castrilli: Absolutely. This is the second item in this bill that gives us some very serious pause. We heard today from members of the bar, from the children's aid society through a written submission, and from Justice for Children and Youth, that it's absolutely wrong-headed to take young offender matters and put them solely in criminal court. Think about what that means for a moment. The Young Offenders Act, as the criminal lawyers here will know — I don't purport to be a criminal lawyer — begins at a very young age, 12.

You are saying that you're going to have 12-year-olds in the provincial court system. Those children have a whole host of problems, one of which may well be an offence of one sort or another. When you put it all into provincial court, you lose the benefit of the family court and the decision-making power in the family court, which I think is part and parcel of how you treat these kids. We want to rehabilitate these kids; we don't want to send them into a system where their life will become much more difficult, where they will be exposed to much more than their young years would permit.

What we had to date, and I think it's a much better system — if anyone has the Courts of Justice Act before

them, you'll see that under 21.12 a presiding judge in family court had all the powers of a provincial court judge in the criminal division. Therefore, you had this concurrent jurisdiction. There is obviously a split among the judiciary with respect to this. The parliamentary assistant this morning was very kind to provide us with letters from Judge LeSage and Judge Linden, who indicated they support the notion that the Young Offenders Act now should just be dealt with under provincial court. Yet the controversy is that the Ontario Family Law Judges Association doesn't agree. They're the ones who deal with these kids. They believe that it ought to stay in the family court, and be transferred to this Unified Family Court. Those are the people who have expertise in the area. The bar is telling us that, and people who deal with children are telling us that it belongs in the family court. So I don't understand the rationale for taking these extraordinary moves and pushing it all into the criminal justice system.

We will vote against this. I think a better compromise would be to simply let the status quo prevail, let there be concurrent jurisdiction so the best possible attention can be given to these kids and so we do not create more problems for them — and for us in the end. If we are going to not look after how we rehabilitate these kids, I think we're going to be paying for them down the line. I don't think there's any question about that. The earlier you expose a child to the criminal system, the better chance you have of growing a criminal.

I'd like the government to really reconsider its position and to simply vote against this section of the bill and allow the existing section of the Courts of Justice Act to prevail. It will do a much better job than this section.

Mr Kormos: I'm going to tell you right now, I'm going to support Bill 48 at the end of the day here in committee and in the Legislature. I think it's important that we move along with the process of Unified Family Courts. You heard the discussion this morning, that I referred to already, on this issue. It was raised by several people and it involved some discussion. Once again, Mr Skarica was one of the parties to that discussion.

I had asked some of the people — again, it's a problem with the haste with which this is proceeding through committee, I suppose — to take a walk down to a provincial court, criminal division and/or even a provincial court, family division and look at the cookie-cutter, sausage-factory justice that is being dispensed. Here in Toronto you have courtrooms, the hallways of which are teeming with people, virtually on top of each other, having to wait outside for their turn to be called into court. You haven't got enough space inside the courtroom for everybody to be there at the same time. People have to wait in the hallway for their turn to be called in.

Unfortunately, there is a big difference between a high-priced defence and a low-priced defence. Legal aid counsel don't have the resources available to them, and the luxury of mounting a sophisticated defence and calling experts and all that sort of stuff. Legal aid simply doesn't permit it. So you have what I call sausage-factory justice taking place.

The speed with which judges are called upon to supposedly dispense justice is alarming. I suppose it's fine if you're looking at it as a third party, watching somebody else get done in. But if you're the kid appearing in front of that court — we're talking here in the context of young offenders — and the judge is just processing them every 15 minutes, it doesn't create a very good impression of the administration of justice. You wonder then why a kid can walk out of a courtroom — again, I'm speaking of young offenders — not having very much regard for what just took place and the parties to it. If you take a look at what's happening — heck, I've walked out of there not having very much regard for what's happening and the people involved in it, never mind being a 13-year-old or 14-year-old kid who may have any number of problems. You heard my reference this morning to a report that 64% of kids in our YO facilities, secure custody, suffer from at least two psychiatric disorders simultaneously. It's an incredible bit of data.

You've got that distinction — these are gross generalizations — between a criminal court judge who hands out essentially what are called tariff sentences — in other words, a car theft is worth X amount; a burglary is worth X amount in terms of penalty; shoplifting is worth X amount, again, depending whether you're a first offender, second offender, third offender — a whole bunch of considerations, but by and large it's a tariff sentencing.

My position is that YO courts call for far more tailored sentencing. What that means — this is where criminal defence lawyers would jump all over me — is sometimes the tariff is inadequate. Let's face it: For a mere shoplifting you can't send somebody away, from a criminal court point of view, for an undue period of time. Let's say you're going to give time. You can't send him away for an unduly lengthy period of time for a mere shoplifting of a candy bar. Yet in YO court, the principles are supposed to be different. Here's a chance for the state to intervene and engage in rehabilitation and/or treatment.

The argument that corresponds with that is that sometimes a judge should be giving a longer sentence than a criminal court judge would give, in other words, than what that offence would be worth in the criminal court — because that's how they're measured: a B and E is worth X amount; a car theft is worth X amount. But that depends upon the availability of treatment programs. The judge has to be sensitive, because we have real problems now in terms of shortages of bed space in open and secure-custody facilities. You've got kids who are being sentenced to open custody and there are no open custody facilities, and similarly vice versa, depending on where the kid is. So the kid is either being shipped 200 miles away from home or the crown, after consulting with a probation officer or what have you, jumps up and says, "Judge, there is no facility of that type with beds in it," so the judge is stymied; the judge can't do what he wants to. And that's assuming he's been given the time.

The amount of time a lawyer can devote to a particular case — so much of this depends upon the lawyers, too, the defence lawyer in particular. That's where the legal aid

issue is very relevant. You heard during Bill 68 hearings about how important it was for a defence lawyer to be involved. You heard it from the lawyer from Thunder Bay, when we were up in Sudbury, the young lawyer who talked with us. I was very impressed with his holistic approach to practising law. He had to be in touch with treatment programs, he had to know what resources were available in the community so he could give direction to the judge during the course of sentencing, so the judge had all these options before him. I believe it's part of a lawyer's job, be it a crown attorney or a defence lawyer, but when you've got this sausage-factory justice and you've got legal aid lawyers, or duty counsel, even worse — not that they're worse, but even more dramatically — processing these people through, that sort of stuff, those representations don't get made to a judge.

1610

This issue of family court judges versus criminal court judges doesn't stand alone. It's part of that bigger package. I suppose at the end of the day merely giving these cases to family court judges won't solve the problem in terms of adequacy of legal aid support, adequacy of number of judges, adequacy of number of courtrooms so justice can be performed in a professional manner, in a thorough manner, but at least it's a start, because we can assume that family judges, because of the nature of the work they're doing, have contact and access to this information as a result of their family court work. I suspect that at the end of the day the cases are going to be processed, the stats will be produced, but there will be, whether they ever become exposed or not, tragedies flowing as a result of this.

What you're doing as well is putting enhanced pressures on criminal court judges. Have you thought of that? You're transferring a huge caseload out of what are now family courts into provincial court, criminal division. These kids, these 12-to-15-year-olds, inclusive, will become part of that mammoth instant justice system.

As I say, go to any courtroom here in Toronto or quite frankly anywhere else in Ontario, whether it's in the basement of a Royal Canadian Legion, as they are in some rural areas, or in city hall chambers or town council chambers or in permanent courtrooms, and watch the cookie-cutter, sausage-factory justice. What you're doing is even adding more to the caseload. I don't think the government has numbers on what the transfer will involve and what it will do to the existing workloads of those provincial court, criminal division judges and their staff and their courtrooms. I think this will rear its head in an unfortunate way before all is said and done, before it's straightened out.

The Vice-Chair: Further discussion? Shall section 4 carry? All in favour? All opposed? It's carried.

Section 5: Any discussion? I will put the motion. All in favour? All opposed? Carried.

Section 6: We have a Liberal motion for an amendment which is not appropriate. Any discussion on section 6?

Ms Castrilli: This is a companion section to section 4, and raises exactly the same issues about how you really

view our responsibility as a society to children who may have gone astray. I would think you would want a 12-year-old, who is a child, to be in a system where one can look at the child's needs and develop some kind of program to ensure that he doesn't reoffend.

I agree totally with my colleague from the third party that it's inappropriate to put young children in that kind of situation, where they're nothing but a number on a docket and there isn't the expertise to deal with all the other issues that this child may be dealing with. We've heard from Justice for Children and Youth, for instance, that these kids have significant other problems. They may come from homes which are broken; they may be in the middle of custody disputes; they may even have some psychiatric disorders. It makes no sense to throw them into the provincial court system, criminal division.

We made these arguments with respect to the previous section. I can only say again that it's simply not appropriate. The best thing to do would be to leave it now as it is, in concurrent jurisdictions, so you have judges with experience to deal with the whole host of problems when they are faced with such young children.

The Vice-Chair: Further discussion? Shall section 6 carry? All in favour? All opposed? It's carried.

I have no amendments to sections 7 through 10. Shall sections 7 through 10 carry? All in favour? Opposed? Carried.

We have a government motion for an addition to section 10.

Mr Martiniuk: I move that schedule A to the bill be amended by adding the following section:

"10.1 Clause 65(2)(a.1) of the act is amended by striking out 'associate chief justices' where it appears and substituting 'associate chief justice'."

The Vice-Chair: Discussion?

Ms Castrilli: Just a question of the parliamentary assistant. This is one of a series of motions that the government has put forward which are identical. They basically change what appears to be the spelling. I'm sure it has more substance than that. I would really like to hear from the parliamentary assistant as to the reason for these changes.

Mr Martiniuk: As I understand it, it's just a technical error. We now have one rather than a number of associate chief justices.

Ms Castrilli: Thanks very much.

Mr Martiniuk: God bless word processing.

The Vice-Chair: Further discussion? You've all heard the amendment. All in favour of the amendment? All opposed? It is carried.

I have no amendments for sections 11 through 18. Shall sections 11 through 18 carry? All in favour? All opposed, if any? It's carried.

We will move to schedule B.

Ms Castrilli: No, I don't think so.

The Vice-Chair: I'm sorry.

I have no amendments to section 19 or section 20. Any discussion?

Mr Martiniuk: Mr Chairman, what are we dealing with?

The Vice-Chair: Section 19 and section 20. Shall sections 19 and 20 carry? All in favour? All opposed? Carried.

Shall schedule A, as amended, carry? All in favour? All opposed? Carried.

Schedule B: I have no amendments to section 1. Any discussion? Shall section 1 carry? All in favour? All opposed? Carried.

Shall section 2 carry? All in favour? All opposed? Carried.

We have a government motion adding section 2.1, a new section.

Mr Martiniuk: I move that schedule B to the bill be amended by adding the following section:

"2.1 Subsection 18(2) of the act is amended by striking out 'the associate chief justices' where it appears and substituting 'the associate chief justice'."

The Vice-Chair: Any discussion? Shall the amendment carry? All in favour? All opposed? Carried.

I have no amendments for section 3 through section 10. Any discussion? Shall sections 3 through 10 carry? All in favour? All opposed? Carried.

I have a government motion adding section 10.1.

Mr Martiniuk: I move that schedule B to the bill be amended by adding the following section:

"10.1 Clause 65(2)(a.1) of the act is amended by striking out 'associate chief justices' where it appears and substituting 'associate chief justice'."

The Vice-Chair: Any discussion? Shall the amendment carry? All in favour? All opposed? Carried.

There are no amendments to section 11 through section 18. Any discussion? Shall sections 11 through 18 carry? All in favour? All opposed? Carried.

Shall schedule B, as amended, carry? All in favour? All opposed? Carried.

Shall the long title of the bill carry? Carried.

Shall Bill 48, as amended, carry? Carried.

Shall Bill 48, as amended, be reported to the House? Agreed.

Ms Castrilli: If I can say a word of thanks to legislative counsel. They really worked very hard with the very little time they had at their disposal. Thanks so much.

The Vice-Chair: I appreciate that. I neglected to do that. Thank you.

Ms Castrilli: And of course you, Chair.

The committee adjourned at 1625.

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ISSN 1180-4386

Legislative Assembly of Ontario

Second Session, 36th Parliament

Assemblée législative de l'Ontario

Deuxième session, 36^e législature

Official Report of Debates (Hansard)

Monday 7 December 1998

Journal des débats (Hansard)

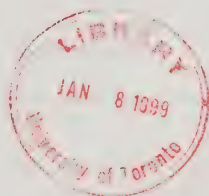
Lundi 7 décembre 1998

Standing committee on finance and economic affairs

Fairness for Property
Taxpayers Act, 1998

Comité permanent des finances et des affaires économiques

Loi de 1998 sur le traitement
équitable des contribuables
des impôts fonciers



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Published by the Legislative Assembly of Ontario



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Publié par l'Assemblée législative de l'Ontario

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRSCOMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES

Monday 7 December 1998

Lundi 7 décembre 1998

The committee met at 0911 in room 2.

ELECTION OF ACTING CHAIR

Clerk of the Committee (Ms Susan Sourial): I call this meeting to order. It's my duty, honourable members, to call upon you to elect an Acting Chair. Are there any nominations?

Mr Gerry Phillips (Scarborough-Agincourt): I nominate Mr Arnott, and that along with his position he receive the pay of the existing Chair. I'm just kidding. I nominate him.

Mr John R. Baird (Nepean): I second that.

Mr Phillips: On the money or —

Clerk of the Committee: Are there any further nominations?

Mr John Gerretsen (Kingston and The Islands): He's the only person we trust around here.

Clerk of the Committee: No further nominations? I declare the nomination closed and Mr Arnott elected acting Chair.

The Acting Chair (Mr Ted Arnott): Thank you, members, for the honour of chairing the committee for the time being.

FAIRNESS FOR PROPERTY
TAXPAYERS ACT, 1998LOI DE 1998 SUR LE TRAITEMENT
ÉQUITABLE DES CONTRIBUABLES
DES IMPÔTS FONCIERS

Consideration of Bill 79, An Act to amend the Assessment Act, Municipal Act, Assessment Review Board Act and Education Act in respect of property taxes / Projet de loi 79, Loi modifiant la Loi sur l'évaluation foncière, la Loi sur les municipalités, la Loi sur la Commission de révision de l'évaluation foncière et la Loi sur l'éducation en ce qui concerne l'impôt foncier.

The Acting Chair: Are there any questions, comments or amendments and, if so, to what section of the bill?

Mr Phillips: I'm not sure how you want to proceed, but if it's permissible I'd start with an overall comment that this process is really public policy at its worst, in my opinion. We received, I think, 25 to 30 government amendments late Friday. We had a one-hour briefing at 8 o'clock this morning, and now we're dealing with a bill

that is going to have — \$15 billion of taxpayers' money is at stake here, and this is really a strange way to do business.

I also am disappointed that the minister wouldn't be here to present his bill and his amendments. With all due respect, I think we're owed that courtesy. This is the seventh property tax bill we've dealt with in the last 18 months.

I'm very disappointed that we had no public input. Frankly, it is, dare I say, obscene that when we're dealing with taxpayers' money like this, when we're dealing with something as fundamental as property taxes, we just shut the public out. I find it offensive and very upsetting. There is no logical explanation for it. I don't know how any government member can defend dealing with public policy in this way when we've shut the public out from any opportunity to have input to what is absolutely fundamental to them.

Furthermore, I have argued for a long while that we're setting property taxes by regulation which, to the layperson, is behind closed doors, by government fiat. What we should be doing is using an open, transparent process. Yet nothing could be further from that. Our caucus sent the minister a letter saying we find it extremely objectionable that nobody from the public had an opportunity to comment on this bill.

Just to express more of my frustration, at 8 o'clock this morning we were told to appear at a certain room for a briefing. There was no one there. The room was locked. The briefing did begin, but at least 10 minutes late. It's a very distressing way to deal with public policy and, I think, quite foreign to the way business should be done in Ontario.

That's my overall comment. We'll deal clause-by-clause with more specific comments. But just as an overview, no one can defend this process. No one can defend the fact that we will not hear from a single organization or individual in Ontario dealing with this enormously important bill. This bill was introduced on November 5, a month ago. We could have had ample opportunity for public input, but we've been denied that.

Mr Tony Silipo (Dovercourt): I also want to make a couple of comments before we get into the actual amendments. I think it's fair to say that this has been one of the most troubling files for the government to deal with. Therefore, I could understand their wish to get this thing over with as quickly as possible. But this has been an

issue that the government has bungled time after time, not only by virtue of having to present seven different bills, each one trying to correct mistakes in the previous iteration, but also in the bill in front of us, Bill 79, with the kind of ludicrous situation of the minister, at the very time he announced the bill, having to indicate he would have to amend this bill to cover multi-residential units, which they forgot to include in the drafting or perhaps decided they should include after they drafted the bill.

It has been a continuing saga of mistake after mistake. We have in front of us this morning a letter, one of a number we continue to receive, from the regional municipality of Peel, indicating in no uncertain words that the region is opposed in principle to Bill 79 in its entirety. Lots of other municipalities and organizations feel the same way.

The government has decided to ignore that advice and the advice of others and to just kind of ram this through. I think it just adds insult to injury because of the government's hurry to get this thing done. We're in a position where we're dealing with clause-by-clause without the usual benefit of actually hearing from at least some of the municipalities and some of the municipal organizations that have to implement this legislation once it's passed, because it will be passed by the government. That's really unfortunate. It's bad law-making and it's bad policy-making, but I'm afraid it's typical of the way this government has handled this issue and, unfortunately, a number of others.

We will go through this process today in the shortened way that it's been set up by the government. We will end up with a piece of legislation that provides municipalities with some additional choices. But given that we're passing this legislation in December, it's going to continue to create chaos and confusion in the municipal world and in the real world when people deal with their property tax bills. I fully expect that this issue is going to continue to be alive and out there. Despite the number of bills the government has brought in, the situation has not been rectified. This is not the way to deal with real reform of the property tax system.

0920

Mr Baird: Just some comments on the comments of my colleagues. Obviously there has been a terrific amount of discussion on this over the last number of years. Leading up to these discussions this morning on clause-by-clause, there has been a good amount of consultation that the ministry, the minister, his officials, his office, that I, that other members of the government have had.

I can tell you some of the organizations we've met with: the Association of Municipalities of Ontario; the Ministry of Municipal Affairs and Housing; area treasurers; the cities of Cornwall, Chatham, Hamilton, Oshawa, Belleville, Toronto, London, Owen Sound; the townships of Saugeen and Smith-Ennismore; the GTCEC; the regions of York, Peel, Halton, Ottawa-Carleton and Durham; region of York staff; the Toronto Congress Centre; the Independent Power Producers' Society; the Toronto, Ottawa, London and Thunder Bay airport authorities; an

expert panel from the Association of Municipalities of Ontario and others; the counties of Simcoe and Wellington; the town of Haldimand. A number of expert panels. I could go on and on: the United Way, the Canadian Council of Christian Charities, Lanark county, Renfrew county — a terrific number of discussions and deliberations that may not fit the type of picture some of the opposition would like to portray.

I think you can see that there are a good number of areas where the government has listened, where it's presenting amendments based on some of those discussions, albeit not all the amendments that would be requested, which I suggest is not unusual in any government. The bottom line for the government with this bill is that we want to step in and ensure that small businesses are protected. There were a good number of tools in past legislation that were not always used. Some municipalities were good actors; they did use a good number of the tools. Others used none. We had a choice to simply sit by and do nothing and allow small business to be hard hit because their local municipality or upper tier chose not to use the tools.

I think I can speak for all my caucus colleagues that we simply were not prepared to sit back and watch small business not be protected. Small business is the economic engine of the province. A terrifically high percentage of the jobs, not just over the last few quarters but over the last three years, were created by small business. Small business led the way with 80% of the new jobs created in Ontario. They're an exceptionally important part of the Ontario economy, and that's why we're moving in to ensure that they are protected.

Mr Gerretsen: I would like to respond to what Mr Baird has just stated. I find it very curious that on December 2 a joint letter was sent by the Association of Municipalities of Ontario, the Association of Municipal Clerks and Treasurers of Ontario, the Municipal Finance Officers' Association of Ontario and the Association of Municipal Tax Collectors of Ontario, that clearly states in a summary page, called "Table of Contents" — this probably summarizes better than anything else what is happening in this bill. I'll just read it into the record, if you don't mind. It states what Bill 79 does not do:

"Bill 79 doesn't cap tax increases at 10% in 1998. Bill 79 doesn't provide protection to small business. Bill 79 doesn't target properties hardest hit. Bill 79 doesn't recognize local efforts and local solutions. Bill 79 doesn't allow adequate time to make important decisions. Bill 79 doesn't address rebates to charities. Bill 79 doesn't cap business improvement area (BIA) levies. Bill 79 doesn't provide fairness for property taxpayers."

That's what it doesn't do, according to these four associations I've just mentioned. What it does do, according to them, is:

"Bill 79 imposes mandatory, inflexible and blunt solutions to manageable problems. Bill 79 increases ratepayer confusion. Bill 79 increases the complexity of the tax system and tax calculations. Bill 79 increases municipal costs. Bill 79 delays current value assessment. Bill 79

introduces further delays in tax billing. Bill 79 provides for standardized municipal tax bills. Bill 79 erodes gains in federal payments-in-lieu."

These are just summaries of what the bill does and doesn't do, which I think completely contradict what's just been stated by the parliamentary assistant.

Mr Phillips: Just a comment on Mr Baird's comment: With all due respect, you're suffering now from the arrogance of power. You say that these groups have met with the government. In a democratic society, we owe people the right to come before a public forum and express their views. When any government thinks they are dealing with the public behind closed doors, in private, and their views can be expressed only in private, we're in serious danger.

Believe me, the government is now caught in its own arrogance. If you want to deal with the government, you deal with them behind closed doors; you can't come in a public forum. You should all look in the mirror and recognize what's happening to you. I've seen it before. I say with a good deal of conviction that if you think you have consulted with people, and you think that people have had public input because you called them into your office, and that's democracy, you're badly mistaken.

I couldn't let those comments go by, because it's extremely serious when the public has no opportunity to participate publicly in something as important as this. You say, "We've met with them." I know what meeting can take place, and I know that people can be threatened behind closed doors. They are owed an opportunity to appear publicly and to express their views publicly, not behind closed doors.

Mr Baird: I don't want to go on all day responding to one after another, but I did want to make one comment with respect to the comments made by my colleague from Kingston. He referred to the table of contents of a joint submission by a number of organizations. I find it passing strange that it says "What Bill 79 does do: Bill 79 imposes mandatory, inflexible and blunt solutions to manageable problems." With the greatest respect, I don't think there are a lot of small business people out there who felt that their municipalities were managing this problem. That's the reason the government is stepping in to protect small business.

Over half of the municipalities didn't use any mitigation tools whatsoever. Clearly the problem was that many municipalities weren't prepared to even try to manage the problem. There were some out there that did. I take my hat off to the folks in Toronto, who used the 2.5% cap. I take my hat off whether they be in Halton, Wellington county, Ottawa-Carleton, where they made earnest attempts to deal with the issue.

I think it would be unfair of me to let it go unresponded to that these problems were not manageable. Simply put, a majority of municipalities were not prepared to manage them. We certainly are inflexible: You have to protect small business, and there's no flexibility there. I have no problem with that.

The Acting Chair: Thank you, Mr Baird.

I'd like to move forward to the various sections of the bill, and I'm sure there will be ample opportunity for members to debate and bring forward issues relative to individual sections of the bill.

Mr Phillips: Does the government have an opening statement, Mr Chair, an explanation?

The Acting Chair: Mr Baird?

Mr Baird: I believe the motion passed by the House just called for clause-by-clause.

Mr Phillips: Point made.

The Acting Chair: Dealing with section 1, is there any comment or debate relative to section 1?

Mr Phillips: On page 3, section 6 actually. I hope I'm not ahead of anybody.

The Acting Chair: We're dealing with section 1.

Mr Phillips: OK, I'm sorry.

The Acting Chair: Seeing no comment or debate on section 1, shall section 1 carry? Carried.

Is there any comment or debate relative to section 2 of the bill? Seeing none, shall section 2 carry? Carried.

It's my understanding that none of the parties has submitted amendments to any section of the bill up until section 13, so would it be amenable to the members to group the remaining sections from section 3 to 12 together and we can vote on them at once?

So one vote, sections 3 to 12. Shall sections 3 to 12 carry?

0930

Mr Phillips: Mr Chairman, in section 6, is it the intent of the government under this section that municipalities may choose to let the 1998 taxes stand but adjust 1999 taxes to reflect the decrease or increase? In other words, will the changes that should have taken place in 1998 be built into the 1999 tax bill?

The Acting Chair: Is your question to Mr Baird?

Mr Phillips: Yes, I guess so.

Mr Baird: Section 6 of the bill?

Mr Phillips: Yes.

Mr Gerald Sholtack: Section 6 allows the assessment division to issue an assessment where a municipality chooses an optional class after the end of 1998 where the minister extends the time. It's a very technical authority to deal with a situation where the time to choose an optional class has been extended by the minister. If the municipality chooses an optional class, the assessment division will issue an assessment to apply that optional class to the municipality in 1998. That's the effect of the amendment contained in section 6 of the bill.

Mr Phillips: Just so I'm clear, a municipality could say: "It's going to take us a while to figure out our 1998 problems, so we're going to be maybe February or March before we get it done. We want the authority to go back to 1998 and establish some additional classes."

Mr Sholtack: Right.

Mr Phillips: Is there any time limit on how long they could apply for that?

Mr Sholtack: Not technically. The minister has the authority to extend the time into 1999, but the municipal-

ities need to, of course, finalize their 1998 taxes. It would probably limit how long they would wait.

Mr Phillips: Just maybe to help me, because you're the expert on it, what is the expectation of how long it will take municipalities, from the day this bill is proclaimed, to be able to reissue their 1998 taxes?

Mr Sholtack: I guess it's difficult to really know, depending on the situation and how quickly they are able to review all of the options and decide which of the tools they wish to use.

Mr Phillips: I understand that, but I'm told it could be, in some cases, February. Is that fair to say? You see, what you're asking us to do is approve a bill that will create some more mess up there. You owe us, in my opinion, some idea of what the mess is going to be. If through what we're approving here the bills get put out in December, I'd like to know that. If it's going to be January, I'd like to know that. If it's February, I'd like to know that. Right now I'm of the opinion that we're going to be well into 1999 before the 1998 taxes can be reissued. We're going to be January or February in most municipalities.

Mr Sholtack: Certainly the ministries will be working with the municipalities, the Ministry of Finance and the Ministry of Municipal Affairs, to help them analyze the tools that are available and to use the provisions of this bill to redo their 1998 taxes.

Mr Phillips: But what do you think is going to happen, or what does somebody think?

Mr Baird: I think probably there will be some degree of difference by municipality. Obviously Toronto, where they used the tools, going back to the announcement —

Mr Phillips: I understand that, John —

Mr Baird: If the municipality had done their homework and had used the tools, it would probably be a lot less time than if they hadn't and had to go back a little bit further in their policy discussions.

Mr Phillips: Can anybody in municipal affairs tell us when they expect the average municipality will be able to get their 1998 tax bills recalculated and sent out?

Mr Baird: I think it would be on a municipality-by-municipality basis.

Mr Phillips: I understand that, but what do you think? What have you been told by the municipalities about when it will happen?

Mr Baird: I think it would be too much of a broad brush to say that municipalities as a whole — I suggested Toronto will obviously require very few, if any, changes. Those few that they may require would be met rather expeditiously. I expect that in some municipalities where they did use some of the tools — I'm thinking of Ottawa-Carleton or Halton or Wellington county — it will be substantially less work. If you use none of them, it perhaps may take a little bit longer, but I think that will depend to some extent on the ability of the municipalities to make their policy decisions, what they're choosing to use, what are the pre-existing tools or combination thereof.

Mr Phillips: As I say, this is the government asking for approval and not telling us what the implications are. The government has gotten the municipalities and the Legis-

lature into hot water for 18 months now by not telling us what's going to happen. My understanding from municipalities is it will be January or February before they can redo their 1998 tax bills. That's most municipalities. If I'm wrong on that, I'd like to know.

Ms Michelle Lalonde: I've heard from a number of municipalities, and their responses have varied. Some, yes, have said they choose to make these adjustments on their interim bills in 1999. That's their plan. Some municipalities that I've talked to have said they don't want any delay and will try and make the adjustments before the end of the year. It really will be, as Mr Baird mentioned, a municipal-specific circumstance, but I think it's fair to say that a lot of municipalities are looking at making the adjustments on their interim bill. Bill 79 does provide them with that ability if they choose to.

The Acting Chair: I think Mr Silipo wanted to make a comment.

Mr Silipo: On sections 7 and 8. May I?

The Acting Chair: Yes, you may.

Mr Silipo: It's really a question, again to Mr Baird —

Mr Baird: Section 7 or 8?

Mr Silipo: Sections 7 and 8. They deal with different parts of the same issue. I believe, if I've understood these sections, these are the ones where we have the extension of the appeal deadline for the assessments, which extends the deadline for appeals to December 31.

I just wanted to be clear in a couple of respects. First is that I gather that the minister has indicated that where the appeals are dealt with by way of review, as opposed to having to go to the formal hearing — because I know that given the number of appeals that have been launched, the folks at the Assessment Review Board are trying very hard to sort out many of them by going through a review initially — in those cases the \$20 fee that is part of the appeal will be waived. Could I get some assurances that that will continue to be the case?

Mr Sholtack: The minister made that announcement and that would be the intention of the government. Where a settlement is reached with the assessment division on a reconsideration and no hearing is necessary at the ARB, the fee will be refunded by the ministry.

Mr Silipo: The other thing was just a question in terms of the deadline as it applies particularly — and I don't see it in here, so I don't know where else it appears in the bill. December 31 is the deadline, but there was also a provision which I think brought it back to December 15 for notification between landlords —

Mr Sholtack: I think you're referring to the date that landlords have to notify their tenants that they intend to pass through.

Mr Silipo: I am, yes. Is that later on?

Mr Sholtack: That's later on, in amendments to section 444.1 of the Municipal Act.

Mr Silipo: OK, then perhaps I'll ask a question at that point.

0940

Mr Phillips: The reason for the later date for appealing your assessment is that no one understands, or few people

understand, the impact of their assessment until they get their taxes. That's what the minister said, by the way. For those who were around here, that's what we said a year and a half ago.

Does that clause — that is, 90 days after the notice required under the subsection is mailed — mean that people have up to 90 days? Let's assume there's going to be some significant tax changes here. Do people have up until 90 days after they get their final tax bill?

Mr Sholtack: No. The amendment to section 35 refers to supplemental assessments, changes that occur during the year. A number of supplemental assessments were issued in October of this year. They have 90 days, or the later of 90 days or December 31, to file their appeal. The 90 days is the provision ordinarily applicable whenever changes are made under section 33 or 34 of the Assessment Act.

These could be improvements to a property; for example, someone has put an addition on a property during 1998. The assessment division will issue a supplemental assessment recording that change and imposing taxes for the rest of the year. Those are the kinds of assessments for which there's a 90-day period, and that's what that provision in section 7 of the bill refers to.

Mr Phillips: So even though some people won't get their real, final tax bill until January or February, which will be after the last date of appeal, that's just —

Mr Sholtack: These are fairly routine events where changes are made to property. Supplemental assessments are issued as a matter of course during the year.

Mr Phillips: I'm on the other issue, which is that the reason for changing it to December 31 was because it was finally recognized that people have difficulty understanding the impact of their assessment until they get their taxes.

Mr Baird: I think it's always a concern where people believe they can appeal their taxes because they find them too high. Of course, that's not a grounds for appeal; you can only appeal on the assessed value of your property. As you know, this is a concern going back many years, not just now. It's a bit of a red herring to say to someone that just because your taxes are too much, you can appeal to the ARB. Of course you can't; you can only appeal based on whether they have got the assessed value correct, not on the numerical value or quantity of your taxes.

Mr Phillips: But the explanation that was given for why we extended to December 31 was because — and this is what the minister said — in 1998, because of the new system, people could not understand the impact of the new assessment system until they got their tax bill. The minister is on record as saying that.

Mr Baird: We've certainly offered to go farther than is normally the case to give people more time to appeal, and that's through to December 31. We've gone much farther based on public request to extend it, and it has been extended. I suspect, though, for some you can extend it, extend it, extend it and there will still be those who find other reasons with which they'd like to appeal.

They can obviously appeal their 1999; that's not affected. They can still move forward and appeal the 1999. If they want to appeal it next year, they're still free to as well.

Mr Silipo: There's one question I forgot to ask earlier. Do we know how many appeals have been lodged to date with the Assessment Review Board on either or both of the residential or commercial side?

Mr Sholtack: I believe initial estimates have been up to 600,000. The latest estimates that I've heard were around 150,000.

Mr Silipo: The 150,000, that's total?

Mr Sholtack: Total.

Mr Baird: That's of over four million properties around the province. In some areas there have definitely been mistakes made; no one's perfect. In other areas they've been remarkably close, and I think it's important to acknowledge that. I did some spot checking in my own constituency and found it to be bang-on. Definitely there's the odd one where something's off, and there is a process where someone can seek to advance them. No one ever calls and congratulates you for getting their assessment bang-on. I think it would be a mistake not to acknowledge that they have done a good job in the vast majority of cases. There are some legitimate concerns, and there is a process to resolve those concerns, both informal and formal.

The Acting Chair: Are there any further questions or comments related to sections 3 to 12?

I'd like to call the vote on sections 3 to 12. Shall sections 3 to 12 carry? Carried.

I've received notice of a government amendment to section 13.

Mr Baird: I move that subsection 13(2) of the bill be amended by adding the following as a subsection of section 366 of the Municipal Act:

"Special reductions

"(16.4) An upper-tier municipality may, with the written approval of the Minister of Finance, set a tax rate for a property class that is lower than would otherwise be allowed under this section."

To speak to it briefly, amendments numbered 1 and 2 for the members are allowing upper-tier, and then in the second amendment lower-tier, municipalities the ability to reduce taxes if they so choose. If they have some extra money and want to target a particular class, they have the right to do that through getting approval at the Ministry of Finance.

I can tell you that there are so many, maybe a small number at this point that we're aware of, where they would like to reduce taxes and target those to a particular class. Obviously there's tremendous variation for commercial-industrial rates and even multi-residential rates across the province. Some municipalities seek to reduce. I think Owen Sound is one example where they certainly talked about it and perhaps may avail themselves of one of these two amendments.

Mr Silipo: Where do you envisage that the money would come from for these rebates or reductions? Is this a

question of municipalities being able again to shift between different property classes, or is this to envision other situations than that?

Mr Baird: It could come from a whole host — it's not shifting from residential but, for example, could come from assessment growth. Some municipalities, I think, could put a small 1% or 2% based on assessment appeal, so depending on the success or lack of in that case. I think Owen Sound is certainly one which wanted to target a particular class for reductions to make themselves more competitive, which is certainly something we would all applaud.

It wouldn't be taking from residential but it could be, you know, even booked into their budget for 1998. But Owen Sound is one example, I think, where they talked about potentially they would like to do it.

Mr Phillips: I was astonished we needed this. I've assumed that if a municipality chose to reduce its tax rate on commercial property or on industrial property or on multi-res, it was quite permissible to do that. Are you saying that if they use the 10, 5, 5, they can't reduce the tax rate over three years on any of these classes?

Mr Baird: The bill freezes the tax ratio to ensure there's no shift onto residential, and that's why these amendments numbers 1 and 2 are needed. I guess we don't want the residential ratepayer to pay for 10, 5, 5 and don't want the burden shifted onto them. That's why amendments numbers 1 and 2 are needed.

It would be naive to suggest that you're going to see a large number of 600-odd municipalities in the province want to target particular classes for tax reductions, but some may. Certainly I would applaud those who would be able to book the money to be able to do that as long as it didn't come from the residential base. Obviously, one of the fundamental foundations of the bill is that 10, 5, 5 can't be paid for affecting residential ratepayers.

0950

Mr Phillips: Let me put it in language I understand. If a municipality currently chooses to use the 10, 5, 5 under the new bill, for three years it cannot reduce the tax rate on commercial or industrial or multi-res, if it's using the 10, 5 and 5. Is that right?

Mr Baird: Not by going to residential.

Mr Sholtack: It applies to all municipalities. The tax ratios established in 1998 apply in 1999 and 2000. So there can't be any reduction in those tax ratios —

Mr Phillips: I said tax rate.

Mr Sholtack: But first the ratios are fixed, and the rates have to be set in the same proportion. That's the significance of tax ratios. This will allow a tax rate to be less than what the tax ratio would require it to be, where the municipality so desires and the minister approves.

Mr Phillips: My understanding of the bill is that the tax ratio is set and a municipality can reduce the tax ratio on commercial and industrial, as long as it doesn't fall below the fairness rule. I'm surprised we need this, because it seems to me any municipality — Owen Sound could say, "We're choosing to reduce our tax rate on commercial." Why can't they do that?

Mr Sholtack: As I said, for the 1998-2000 period the tax ratios cannot be reduced.

Mr Phillips: I said rates, not ratios.

Mr Baird: But the rates are based on ratios.

Mr Sholtack: The rate is related to the ratio. You can't set a rate that is not in the same proportion as the tax ratio.

Mr Phillips: I'm going to pursue this a little bit. I'm a municipality. I've got my tax ratios and I say I want to reduce the tax rate on commercial — the tax rate, not ratio. The previous bills all permitted me to do that, as long as I'm not falling below the fairness rule. I have no idea why we need this amendment. It seems to me it's already permissible.

Mr Baird: The ratios would be constant. You'd probably have to reduce residential at the same time to be commensurate with it. If you want to target a particular class, essentially these amendments would allow the minister to allow the ratios to be altered, as long as it wasn't paid for under the residential rolls. You can proceed now, but you can't target it towards a particular class because you'd have to reduce the residential in a commensurate way to maintain the ratio. The amendments here for the upper and then lower allow —

Mr Phillips: I don't believe that to be the case. I believe that in previous bills — it says "tax rate"; it doesn't mention "ratio" here at all, just "tax rate." I'd just like to know, because it sounds to me like Bill 79, if you adopt the 10, 5 and 5, locks in your tax rates.

Ms Lalonde: It locks in your tax ratios, which is different than a tax rate. It locks in the ratios, but basically a municipality is free to deliver an overall budget cut to all classes if it wants, as Mr Baird mentioned. These provisions allow them, if they want to target a tax cut to particular classes — if they've booked some money into their budget, for instance, they can target that money to a specific property class.

Mr Phillips: What bill prohibits them from doing that right now?

Ms Lalonde: Bill 79, right now, as a general principle, freezes the tax ratios that were adopted by municipalities in 1998 for the purposes of ensuring that this protection under Bill 79 does not affect the residential taxpayer.

Mr Phillips: That's the point I've been making all along. That is that previous bills — not Bill 79 — allowed municipalities, if they said, "We think our industrial rates are too high. We're going to reduce the tax rate" —

Ms Lalonde: Ratio.

Mr Sholtack: No.

Mr Phillips: I know you keep saying "ratio," but it's —

Mr Sholtack: Because the act says the rates on different classes must be in the same proportion to each other as the tax ratios that are established. That's why it's the tax ratio that determines the level of taxation on a particular class. The tax rate has to be set in proportion to that tax ratio. So if you want to reduce the level of taxation on, say, the industrial property class, you have to reduce the tax ratio, and the act does not allow that.

Mr Phillips: What act doesn't allow it?

Mr Sholtack: Bill 79 does not allow —

Mr Phillips: But all previous acts did, until Bill 79 came along.

Mr Sholtack: Yes.

Mr Phillips: So Bill 79 prohibits it.

Mr Sholtack: It's designed to prevent a shift on to residential property.

Mr Phillips: That's one thing it's designed to do, but it's designed to prohibit reducing taxes on industrial or commercial.

Mr Baird: But that would be wrong to say. It's designed to ensure the residential isn't bled off to commercial-industrial in relation to the 10, 5, 5. The 10, 5, 5 is a cap for commercial-industrial properties, and obviously we're proposing multi-residential. But we want to ensure the residential ratepayer is protected.

For those municipalities that would like to change the ratio and target to a particular property class, that's why we're bringing forward the amendments that would allow that, but they can't do it — if you want to do it now, you have to do it at the same ratio with the residential. Municipality by municipality, some are better actors than others. Some on multi-res have a 4.5-to-1 ratio; others have a 2-to-1 ratio. The same thing for many commercial-industrial classes. Obviously, in Toronto the commercial-industrial ratio has been much different than is the case in Ottawa or in Lanark county. If a municipality wants to take the opportunity to target a particular class to make itself more competitive, it can do so, but it can't do it from the residential ratepayer.

Mr Phillips: With all due respect, I think you're trying to bamboozle us. I've spent a year and a half on this committee and I can remember the Minister of Finance saying, "This is designed to allow municipalities to reduce tax rates on commercial-industrial," blah, blah, blah. Now, I gather from what you're saying, Bill 79 would prohibit that, but with the written permission of the ministry you can do it. So maybe an unintended consequence of Bill 79 is that municipalities cannot reduce the tax rates on commercial-industrial without the written permission of the minister.

Mr Baird: They can. If they want to reduce the tax rates on commercial-industrial, they can. They're free to do it under Bill 79, but they have to do it equivalent with residential. If they want to target to a particular property class, these two amendments would allow that, but they can't be paid for out of the residential rate.

Mr Phillips: But on previous bills they could do it on whatever class they wanted to, as long as they weren't out of the fairness ratios. Bill 79 changes that.

Mr Baird: One of the cornerstones of Bill 79 is we don't want residential ratepayers to be affected by the decisions taken for commercial-industrial and multi-residential. I can appreciate there will be differences on that.

Mr Phillips: As far as I'm concerned, it's less than forthcoming.

Mr Silipo: Ironically, though, this amendment leaves the door open for the minister to approve not just differentiated ratios between classes, but also, going back to the question I raised earlier where you said, Mr Baird, that this money could come from assessment growth — or it could come from a shift from the residential; there's nothing to prevent that from happening.

Mr Sholtack: This is only a tax rate reduction. The tax ratios remain the same, and by approving a tax rate reduction for a particular class, there's no increase in taxes on any other class. It is a one-time or an annual decision by a municipality. If they booked money for a particular class reduction, they could follow through on that. As Mr Baird said, Owen Sound has indicated it does have money it would like to target to the industrial property class. That is the only thing that can be done under this provision. There cannot be any increase in any other class.

Mr Silipo: No, I appreciate it's not an increase on any other classes, but the reverse isn't true, right? Which is that by allowing a focusing of the reduction of the tax rate on a particular property class, you are affecting the ratio. How are you not affecting the ratio? If you are providing additional relief to one property class in terms of the rate it pays, doesn't that in and of itself mean that proportionately the other classes, ie, the residential, are paying more?

Mr Sholtack: Not for the one year. For the one year there is surplus money, as it were, that the municipality wants to target to, say, its industrial class, the taxes remain the same on everyone else. That surplus is then targeted to that particular class. The other way to get rid of a surplus is to give everybody a tax decrease.

1000

Mr Silipo: Right. My point exactly. Without this amendment the municipality would have to provide that reduction right across the board to everyone — residential, commercial etc — right?

Mr Sholtack: That's right.

Mr Baird: There is obviously a public policy interest in looking at the ratios for commercial-industrial. One of the things the provincial government is following through on is a significant reduction in the business education taxes that are above the provincial average. Obviously, it's a real concern for many municipalities, particularly yours in Toronto, sir. If you look at Hamilton-Wentworth, it's a concern there. This gives some degree of flexibility to the local municipality to decide that if their commercial-industrial rates are too high and they want to take some action on it in terms of the climate for economic development in their communities, they have that right.

I think we would all agree there's pretty widespread support for reducing the C and I education taxes that are above the provincial average. I believe there's pretty widespread support, that that's a good public policy objective. This allows local municipalities to at least make application to target a tax set to a particular class. It may be at an obscene ratio, higher than it otherwise should be. When you look at the ratios around the province, it's

staggering — and you wonder why some areas aren't doing well economically and why some areas are doing better.

The Acting Chair: We're discussing Mr Baird's motion to amend section 13 of the bill. Are there any further comments or questions? I would like to call the vote on the amendment. Shall the amendment moved by Mr Baird to section 13 carry? All in favour? Opposed? The amendment carries.

Shall section 13, as amended, carry? All in favour? Opposed? Carried.

Moving now to section 14, I have received notice that there's a government amendment to the section.

Mr Baird: I move that section 14 of the bill be amended by adding the following as a subsection of section 368 of the Municipal Act:

"Special reductions

"(8) A local municipality may, with the written approval of the Minister of Finance, set a tax rate for a property class that is lower than would otherwise be allowed under this section."

To speak to it briefly, this is pretty much the same amendment, but applying to local municipalities as opposed to the upper tier.

The Acting Chair: Questions or comments relative to Mr Baird's motion? Seeing none, I'd like to vote on that motion. Shall Mr Baird's motion to amend section 14 of the bill carry? All in favour? Those opposed? The motion is carried.

Shall section 14 of the bill, as amended, carry? All in favour? Opposed? Carried.

Moving to section 15 of the bill, I have notice of a government motion.

Mr Baird: I move that section 368.0.3 of the Municipal Act, as set out in section 15 of the bill, be amended by adding the following subsection:

"Non-application of section

"(5) This section does not apply to a municipality with respect to which part XXII.1 applies if the bylaw that makes part XXII.1 apply was passed before the day the Fairness for Property Taxpayers Act, 1998 received royal assent."

To speak to this motion briefly, it's basically a special allowance for Toronto. This amendment would allow the city of Toronto to pass a bylaw to levy 1999 interim taxes before December 31, 1998, since they are not rebilling. Obviously, Toronto used the 2.5% cap and no significant changes are required as a result of the bill. As I understand it, Toronto typically sends out its tax bills in December and they are then payable some time in the latter part of the January. Because they don't have to make any real changes, this allows the city of Toronto to proceed as they normally would with respect to their 1999 bylaws and billings.

Mr Phillips: I gather this is designed to allow the city of Toronto to send out its interim tax bills for 1999 early, or on its normal schedule, and Toronto is the only one that can qualify for this.

We've talked to a lot of municipalities that are similarly concerned about getting their 1999 interim tax bills out, many of which send them out in January, for cash flow reasons. They believe it's going to take them several weeks to get their 1998 taxes straightened around.

My question is this: Why would we not want to try and accommodate other municipalities? Why would this be a Toronto-only motion?

Mr Baird: I could speak to it briefly and then the officials may want to expand on it. There is the regulatory power under the bill, citing specifically section 370 of the Municipal Act which does allow the Ministry of Finance, after December 31, to make allowances for what you just requested. Obviously, Toronto is in a unique position, since they did use the tools that were announced in March and don't have the significant problems that other small businesses in other municipalities have had. So there is a regulatory power to do so after December 31.

Mr Phillips: What does a municipality have to do before it can qualify to send its interim tax bill out?

Mr Sholtack: The Minister of Municipal Affairs is authorized to make regulations to allow the council to send out an interim bill in the prescribed circumstances. The Minister of Municipal Affairs will be looking at each municipal situation to determine in what circumstances interim billing will be permitted. As you say, cash flow concerns and the state of their reconsiderations and the use of tools and how close they are to rebilling for 1998 — all those circumstances will be set out in a regulation that may authorize interim billing before the 1998 recalculations are done.

The difficulty is, of course, if you sent out an interim bill based on 1998 taxes as calculated, it would cause a hardship where those taxes are going to be reduced, so the circumstances have to be looked at to determine what amount the municipality will be authorized to interim-bill.

Mr Phillips: Why wouldn't we just have one little paragraph that says the municipalities must get approval from the minister to do it? Why go through all of this?

Mr Sholtack: The feeling is that the circumstances have to be looked at, the ground rules have to be set for all municipalities and that's best done through a regulation.

Mr Phillips: That's my point. The government has put us through chaos with this stuff for 18 months and we keep being required to approve these things, and then our municipalities come back and say, "We can't even get our interim tax bills out." You say, "We need to lay out the ground rules for it," but there are no ground rules; they will all be done through regulation, sort of whatever the minister wants to do. I guess it's just my frustration with the public thinking that we're actually having some say in this thing.

What we're approving here is Toronto gets an exclusion and everybody else has to beg the minister to send out their interim tax bills. That's the way I read it. If somebody disagrees with that, let me know.

The Acting Chair: We're dealing with a government motion to amend section 15. Are there any further questions or comments relative to the motion? I would like

to now vote on the amendment. All in favour of Mr Baird's motion? Those opposed? The motion is carried.

Shall section 15, as amended, carry? All in favour? Opposed? Section 15 is carried.

Section 16, I have no notice of amendment. Shall section 16 carry? All in favour? Those opposed? Carried.

I have no notice of motion to section 17. Shall section 17 of the bill carry? All in favour? Those opposed? Section 17 is carried.

I've received notice of motion by the government to amend section 18.

1010

Mr Baird: I move that section 18 of the bill be amended by adding the following subsection:

"(1.1) Subsection 372(11) of the act, as re-enacted by the Statutes of Ontario, 1998, chapter 3, section 21, is amended by adding, at the end, 'However, a bylaw under subsection (1) may provide that it does not apply with respect to payments in lieu of taxes.'"

To speak briefly to this issue, this gives the municipalities the ability to exclude PIL properties from any eight-year phase-in that they may choose to use. I believe Halton was one of the municipalities that had discussed this. In my own municipality there are a significant number of federal properties. I believe the city of Ottawa may get pretty close to 40% or 50% of their revenue from PILs, so it's obviously incredibly important.

This applies not just to the federal government but to the government of Ontario as well. Governments aren't a small business. They certainly have the capacity to pay their fair share of taxes.

This is an issue on which we worked very closely, not just with my colleague Doug Rollins, who represents Trenton, where they have the air base, but also Ottawa-Carleton, the mayor of Ottawa; the regional chair of Ottawa, Mr Chiarelli; the deputy mayor of Ottawa, Allan Higdon; the mayor of Gloucester, and representatives from the staffs of a good number of the municipalities, particularly in Ottawa-Carleton.

Mr Phillips: Is this the language that's been requested by the city of Ottawa or the region of Carleton?

Mr Baird: This particular amendment I believe deals with the eight-year phase-in. There have been a good number of very constructive discussions between Mr Watson and Mr Chiarelli and officials within the ministry.

Mr Phillips: Is this the language they requested?

Mr Baird: I don't know if it would be identical but it certainly goes very much in the direction of the discussions we've had with them.

Mr Sholtack: Certainly, that was what they wanted to be able to do, and the language gives them the authority to do that. They've asked for the power to be able to exclude PIL properties from the phase-in and this language will allow that to happen.

Mr Phillips: What's the policy logic of excluding presumably the taxpayers? As they said, there's one taxpayer and the taxpayer is going to fund this increase. What's the policy logic of saying to someone who's paying these

things, "We think above 10% was too much for somebody else but it's OK for you"?

Mr Baird: I feel strongly on this. We're talking about commercial-industrial property. The whole purpose of having a phase-in period would be to allow a period of adjustment for those businesses, particularly small businesses, that would face increases. The provincial government and the federal government aren't a small business. They certainly have the capacity to pay their fair share, perhaps in a way that particularly a small business, a small enterprise, wouldn't.

Mr Phillips: So the taxpayers can afford this. Is that what you're saying?

Mr Baird: The provincial and federal governments aren't a small business. The case of a small business operator in Deep River or Trenton would be very different from that of an Ontario government property, for example.

Mr Phillips: AMO told us that there was some battle nationally to get the federal government to pay at the existing commercial rate, and now — I may be wrong in this — there is federal legislation that requires that. Is there any federal legislation that has to be changed to accommodate this? Does anybody know?

Mr Sholtack: No, I don't think so.

Mr Phillips: You don't think there is or you —

Mr Sholtack: There is federal legislation but it doesn't need to be changed to accommodate this.

Mr Baird: It's probably dealing with three types of issues. The area that I'm most familiar with would be the federal government because I'm from Ottawa-Carleton. The federal government, for example, didn't pay the equivalent of the business occupancy tax in Ontario whereas they did across the river in Quebec. So if you had two essentially identical office towers, one on one side of the river versus one on the other side of the river, they would pay the equivalent of the business occupancy tax in Quebec whereas they didn't do that in Ontario. Obviously the same principle would apply. So that would be one.

The federal government has always said they wanted to be treated as a taxpayer like everyone else, but no other taxpayer in Ontario could get away with only paying 80 cents or 90 cents on the dollar. If you and I run a business and we don't like our assessment and we appeal it and we lose, that's too bad, whereas the federal government, if they're given an assessment of a property and they don't like it, they just refuse to pay it and will pay 80 cents or 90 cents and sometimes 70 cents on the dollar. They have the ability to dispute the assessed value that any other taxpayer wouldn't have.

Mr Phillips: So if the federal government is leasing space in a commercial building, what rate will they pay at?

Mr Sholtack: If the federal government leases space in a commercial building, it's the owner of the building who will pay the tax, and that owner would pay the regular tax that anyone else pays.

Mr Baird: But they wouldn't have paid —

Mr Sholtack: PIL properties are properties owned by a government.

Mr Phillips: OK.

Mr Baird: When you think of Ottawa, obviously the biggest one would be the Parliament Buildings, but you'd have everything from the National Arts Centre to museums to simple office towers.

Mr Phillips: It's a neat little cash cow for the province.

Mr Baird: For the municipalities.

Mr Phillips: Does any of this go to education?

Mr Sholtack: The federal PILs pay school taxes also, but there's a rule that most of the money stays with the municipality.

Mr Phillips: So none of it goes to education.

Mr Sholtack: Yes. The only education taxes are paid on defence bases, where there are student soldiers, and that money is then directed to the local school board. But ordinary commercial property — school rates are not shared with the school board.

Mr Baird: I don't think there would be any rationale for this being a cash cow for the government of Ontario. We'd have to pay. We're a PIL player ourselves, obviously not to the same extent that the federal government would be, so I don't think it's a cash cow for the province. There was a degree of inequity in the past. I mentioned the examples in Ottawa-Carleton, where on the Hull side the federal government would have a building and essentially would be paying something equivalent or commensurate with the BOT, but in Ontario they wouldn't have had to pay that. That's bringing that equity to Ontario, whereas it pre-existed in Quebec. It is not chicken feed for the city of Ottawa, for the regional municipality of Ottawa-Carleton or for Gloucester; a little bit in Nepean, which I represent, but not a particularly high amount. Certainly in Ottawa, Ottawa-Carleton and Gloucester it's nothing to bat an eye at.

Mr Silipo: I just want to indicate that this is probably one of the few amendments that I could actually support. Until such time as the federal government decides to rectify the issue of transfer payments to provinces, particularly Ontario, I think there is good justification for saying to them that they ought to pay whatever the increases would be, as opposed to having those phased in over a period of time. So I have no qualms at all about taking that position.

1020

Mr Baird: If I could just put on the record that there has been a lot of work done by the Canadian association of municipalities on this issue and by a lot of municipal leaders in Ontario, and certainly the discussions with the officials at the Department of Public Works on this issue have been very constructive and we're hoping we can go forward and seek resolution. I know I spoke with Mr Watson and Mr Chiarelli just in the last few days on this issue.

The Acting Chair: Are there any further comments? Mr Baird has moved an amendment to section 18. Shall the motion carry? All in favour? Those opposed? The motion carries.

Shall section 18, as amended, carry? All in favour? Opposed? The section is carried.

I have received no notice of amendments to sections 19, 20 or 21.

Mr Phillips: I'm sorry. I was preoccupied there. Did we go through page 19?

The Acting Chair: We've just passed section 18.

Mr Phillips: OK, I'm fine. I'm OK.

The Acting Chair: Since there are no amendments to sections 19, 20 and 21, I am proposing again that we group those together as one vote, if there are no objections. We can discuss them.

Mr Phillips: On 21, the municipalities have been wondering when they'll be able to send out their own communications to their taxpayers and when the province will stop dictating to them.

Does section 21 mean that, unless they get written authorization to change it, municipalities have to send out the prescribed Ontario-government-ordered form and communication? Is that what that means?

Mr Sholtack: Yes.

Mr Baird: Yes.

Mr Phillips: For what reason? Why would we not allow municipalities to communicate with their taxpayers?

Mr Baird: Let's be very clear. The municipalities are always free to communicate with their taxpayers. They are always free to put something in with the tax bill. I think, if anything, the government allowed a terrific amount of flexibility this past year. We saw the problems that were perhaps no better illustrated than by the morning Mrs Lastman got her tax bill in the mail and your mayor's strong concerns as to whether it was readable. There was a terrific amount of latitude given.

Mr Phillips: But why would we not let the municipalities send it out? Why do we have to say, "Here is the form and you must send this form out exactly like this"?

Mr Baird: I think there is a value to consistency and uniformity.

Mr Phillips: What's the value? The taxpayer gets one notice. Why should it be that the province dictates what Halton or Peel say?

Mr Sholtack: I think you want a form that will be understandable by the taxpayers and a form that is uniform across the province, that explains the effect of the bill.

Mr Phillips: Are you saying that municipalities can't send something out that's intelligible to them?

Mr Baird: Mr Lastman certainly indicated in the strongest of terms that his municipality had trouble.

Mr Phillips: OK, I understand now. The municipalities can't do it properly.

Mr Baird: Mayor Lastman certainly indicated his concern.

Mr Phillips: I understand now. It's that you can't trust municipalities to get it accurately done.

Mr Baird: I certainly heard loudly and clearly that Mr Lastman had concerns.

Mr Phillips: They'll appreciate knowing that. Thank you.

The Acting Chair: Are there any further comments or questions related to sections 19, 20 or 21? I'd like to vote on those sections together now.

Mr Baird: Just one further thing to respond to that. It's obviously a permissive regulatory power. Nothing has been regulated yet, so there is obviously a desire to work with the municipalities to come up with an appropriate form.

The Acting Chair: Shall sections 19, 20 and 21 carry? All in favour? Those opposed? Those sections are carried.

We are now dealing with section 22. I have noticed that the New Democrats have an amendment to section 22.

Mr Silipo: I move that section 22 of the bill be amended by adding the following as subsections of section 442.1 of the Municipal Act:

"Eligible charities not to lose under part XXII.2

"(11.2.1) In making regulations under clause (11.2)(a), the Minister of Finance shall ensure that the net taxes payable by an eligible charity on property to which division B of part XXII.2 applies are no greater than the net taxes that would have been payable by the eligible charity if part XXII.2 did not apply.

"Net taxes"

"(11.2.2) In subsection (11.2.1),

"Net taxes" means the taxes payable by the eligible charity, including amounts the eligible charity is required to pay under sections 444.1 or 444.2, minus the rebate the eligible charity is eligible for under this section."

This amendment in our view would ensure that charities would not lose by virtue of losing the 40% rebate that was envisioned under the previous incarnation and the existing incarnation of the property tax system under Bill 16, and that they would not lose as we shift from that to the 10, 5, 5 situation.

In fact, AMO and the other organizations have pointed out in their brief the worry they have, at the very least, about the delays in the payments of rebates to eligible charities that this would cause. There now have to be some pretty complicated calculations done and this is going to cause some cash flows for many charities, which I certainly don't know how we could address given that the government has decided to go this route.

What we want to make sure happens is that, at the very least, the principle that was established in the previous bill, that is, that there would be a rebate of 40% of 1998 taxes for municipalities, still continues to be the case. What we're saying is, no matter how all this shakes down, this should not result in the rebates to the charities being any less than they would have been if this legislation had not been introduced.

Mr Baird: I just want to say at the outset, I appreciate the motivation of the member for Dovercourt and I think I understand where he's coming from.

I think there is a legitimate concern that the amendment could potentially overcompensate the charities in Bill 16, at least half of which was obviously designed to help small business to make up that portion of the 40% of their taxes that would have been based on the pre-existing BOT.

I believe the intent is to continue to protect the given in Bill 16 on the 40%. I just think there is a concern that there is a potential to overcompensate charities. I know the officials within the ministry got together on December 1 with the United Way, the Heart and Stroke Foundation and the Canadian Council of Christian Charities to discuss the rebate to charities issue, and under section 22 there is the ability to set regulations with respect to some of the issues he mentioned: cash flow, the instalments and how they are to be made and so forth. Maybe I could ask our officials to clarify.

Mr Sholtack: The intent of Bill 16 in providing for a rebate to a charity was that what was formerly the business occupancy tax was incorporated into the general tax rate so that the landlord would have to pay that and generally pass it on to the charity. So 40% was going to be about equal to the average across the province.

With the 10, 5, 5 cap, there is no business occupancy that is built into the taxes. So where a charity occupied land, an office, in 1997, the landlord would not be paying any BOT under the 10, 5, 5 cap. The portion would be subject to the 1997 taxes that the landlord paid, plus 10% if the property was going up or a percentage if it was going down, plus any municipal tax increases. Therefore, if a charity received 40% of the total taxes that the charity paid under the 10, 5, 5 cap, they would really be getting much more than what Bill 16 had intended them to get. That's the difficulty with the proposed amendment.

1030

Mr Silipo: Except that our amendment intends to ensure that overall the charities don't receive any less than they were going to. I don't think I'm hearing from either Mr Baird or the ministry officials that it's their intention that charities receive less than they were going to overall, because again we're talking about a pot which, while increases and decreases will vary from what they would have been before, once the 10, 5 and 5 caps are put on, the overall amount that is being gathered is the same.

Mr Sholtack: It may be a difficulty in understanding the intent of the provision as drafted, but it appeared to us that it was going to require the charity to receive 40% of the taxes they paid, which would have been the situation if part XXII.2 did not apply. That's the way we read the provision, that under part XXII.2 the portion occupied by the charity would not be subject to any business taxes.

The Acting Chair: Any further comments on Mr Silipo's motion? I'd like to move now to a vote. All in favour? Those opposed? The motion is defeated.

Shall section 22 of the bill carry? Those in favour? Those opposed? Section 22 is carried.

Moving now to section 23, I have received notice of a government motion.

Mr Baird: I move that paragraph 2 of subsection 442.2(13.1) of the Municipal Act, as set out in subsection 23(6) of the bill, be amended by striking out "clause (12)(c)" in the first and second line and substituting "clause (12)(a)."

It's a technical amendment to fix an incorrect clause reference.

Mr Gerretsen: When you say it's a technical amendment, do you mean it's a typographical amendment?

Mr Baird: Yes.

Mr Gerretsen: How many other typographical amendments are there in this bill?

Mr Baird: Three or four.

The Acting Chair: Any other questions or comments related to the motion? I'd like to now vote on the motion. All those in favour of the motion, please indicate. Those opposed? The motion is carried.

Shall section 23, as amended, carry? All in favour? Those opposed? Section 23, as amended, is carried.

We're now dealing with section 24. I've received no indication of motions by any of the three parties. Shall section 24 of the bill carry? All in favour? Those opposed? Section 24 is carried.

Dealing with section 25, I've received no indication of motions. Do you wish to make a comment, Mr Silipo?

Mr Silipo: I think this is where the issue I raised earlier falls. Am I right? The question of the landlord and tenant notice provision, the latter part of section 25. I just want to raise a concern on this.

I of course appreciate, and I think the government did what it had to do in extending the deadlines to the end of December. I continue to worry about the same problem we had even last summer, in July, when the first deadline came up and many people seemed to be completely unaware of it, that despite the fact that this deadline has been extended, and as I say, I appreciate the fact that it has been, given that we now are very close to December 15, or the 16th I guess, when this would apply, and that's the notice, we're talking here about the notice period for — December 31 is the last day for appeals on assessments, but to allow tenants of commercial properties the ability to also exercise their right if they wish to have the assessment appealed, there has to be a notice provision for 15 days prior to December 31 for landlords to provide notice to tenants.

I'm just concerned that this is going to continue to cause problems in the sense that many people out there may still not be aware of it, because I don't think there's been any publicity that I have seen on this, either by the government or, here in my own municipality, by the municipality.

I want to raise that. If either Mr Baird or the ministry officials have any comments, I'd appreciate hearing them. I just have a funny feeling that despite the extension, this is going to continue to be an issue.

There is also the other related issue — I don't know what the government intends to do about it — which is that I'm hearing now of instance after instance where the landlord is going to the tenant and saying, "Here's what you have to pay me to compensate for the BOT transfer taking place." The tenants are basically saying, "It's not my problem, thank you very much." That leaves the owner of the property in a situation where I gather the only recourse they have is to treat that as unpaid rent and then to start to go through all the processes they would have to in their lease.

I just want to raise this. I think both of those issues are going to continue to cause some problems out there. I don't think it's necessarily a huge number across the province. I don't want to pretend that it is, but I think anybody who thinks that simply extending this is going to rectify the problem without any notification having taken place is fooling themselves.

Mr Baird: To speak to the first issue, and then I'll see if my colleague has a comment in terms of the operational issue you mentioned, you obviously have to set a deadline at some point. I think there's been a degree of flexibility on that deadline. I suggest that whenever the deadline is, there's going to be the odd case where someone would have preferred more time. I think that's by the nature of anything with a deadline.

I can perhaps point out that the deadline, of December 15 in this case, is only with regard to the 1998 taxes. There's still a significant amount of time for 1999, so it doesn't close the door for 20 years, as it might have in other areas of government where there have been deadlines. I'm thinking of one on education. That's just to cover the first one.

Mr Sholtack: The issue with respect to the recovery of the business taxes in the taxes: I guess it's an education exercise of informing tenants that in the ordinary situation the business taxes the tenant paid in 1997 are now built into the 1998 taxes. I'm sure most tenants will appreciate that they're not getting a bill now for business taxes, so the landlord recovering those business taxes under a net lease is appropriate. I think most fair-minded business tenants will understand that, in view of the savings they're making in not paying business tax in 1998.

Mr Silipo: I don't want to belabour the point, but if you recall, at the time the government first announced the removal of the business occupancy tax, that's all the government talked about. That's all their PR stressed. They didn't talk about the fact that they were removing the business occupancy tax, but that they were shifting that amount of taxes on to the owners of the commercial properties. It wouldn't surprise me if there are business operators out there who are renting their premises who are saying: "You told us you were taking the BOT off. How come I have to pay now with increased property taxes?" It's one of those situations where the government's PR is, quite frankly, coming back to bite them, because this is what happens when you only tell half the story and people actually begin to believe it. Then you have to deal with the consequences of that. I think that's what the government is going to continue to find they're going to have to do.

Mr Baird: Maybe this is a potential target for some advertising.

Mr Silipo: It might be.

1040

The Acting Chair: We're still talking about section 25. Are there any further comments? I'd like to call the vote now. Those in favour, please indicate. Those opposed? Section 25 is carried.

Moving on to section 26. I'd like to vote on section 26, given the fact there are no amendments. All in favour of

section 26, please indicate. Those opposed? Section 26 is carried.

Moving now to section 27, I received notice from the New Democrats that there is an amendment they wish to propose.

Mr Silipo: I move that section 27 of the bill be amended by adding the following subsection:

"(0.1) Subsection 447.3(1) of the act, as enacted by the Statutes of Ontario, 1998, chapter 3, section 30, is repealed and the following substituted:

"Bylaw making part apply

"447.3(1) The council of a municipality, other than a lower-tier municipality, may pass a bylaw to make this part apply for 1998, 1999 or 2000 or any combination of those years with respect to property in the municipality that is in a property class designated in the bylaw."

What this amendment does, and the next amendment is in effect a consequential one to this, is that it would allow municipalities to apply the caps in any of the 1998, 1999 or 2000 years. Currently they have to do either all three years or nothing. We think that given the mess municipalities find themselves in, one of the options they ought to have is the option of only applying those caps on a combination of those years. If they wanted to let 1998 go by and begin in 1999, they could do that. If they wanted to do a combination, they could do that. It's trying to provide them with a little bit more flexibility given the lateness with which these changes are being implemented and the fact that some municipalities, looking at their own circumstances, might opt for a combination of solutions to this dilemma that might be different than what the government is contemplating.

Mr Baird: Just a question: Obviously this is with respect to 2.5% caps, so we're primarily talking about the city of Toronto. If I was a small business person, perhaps earning less than \$80,000 a year, would this raise my taxes?

Mr Silipo: I don't know.

Mr Baird: Would this allow my city councillor to raise my taxes, if I was a small business person making less than \$80,000?

Mr Silipo: I have no idea of that because, as you know very well, we don't know the relationship between earning power and property taxes; maybe one day we will. This simply tries to provide some flexibility to the municipalities. Given, quite frankly, the mess your government has created, I think it's important we provide municipalities with the widest range of tools possible to try and figure out how they can make the best sense out of a pretty bad situation.

Mr Baird: But essentially Bill 16 said that if you use the 2.5% cap on commercial-industrial, it's a hard cap, so it would basically freeze taxes in the commercial-industrial classes. This would open that up again, and for a lot of small business people who have now been able to count on not just Bill 16 but on Mayor Lastman and council's decision to freeze taxes for three years, would allow that to be reversed. A lot of small business people with incomes of less than \$80,000 would have the potential at

least to face tax increases above the 2.5% cap. Because council made a three-year commitment to that, they've been able to budget on that.

Mr Silipo: You're right, council made a three-year commitment, but council also, in Toronto at least, is now finding that as they deal with the next budget year, and I suspect the year after that is going to be even worse, they're going to have a really hard time as they see the full impact of the download on to their property tax base. They might regret having locked themselves into the situation they did.

I don't have any qualms about small businesses having their taxes kept at 2.5%. I thought that was a reasonable thing to have done in light of what would have happened to many small businesses. I also think the municipalities ought to have the ability, if they want to reopen that issue, to do so. I'm not telling them they should do that. That's an issue for them to address. Although I don't hear many Toronto municipal politicians today saying that they want to be able to have that flexibility, I wouldn't be surprised if six months from now some of them begin to scratch their heads and say, "My God, how can we justify putting all of these additional increases on to the residential side?" I don't think the last word has been said yet on whether the municipality here in Toronto is going to be able, for example, to carry on with its commitment to a zero-budget increase. They're going to have some pretty nasty choices to make for them to adhere to that promise made by Mayor Lastman and others.

I'm looking to provide them now, in anticipation of some of those problems, with some flexibility. If they think the scheme they've set up is the best one, then they'll continue that.

The Acting Chair: Any further comments related to Mr Silipo's motion? I'd like the members to vote. All in favour of the motion, please indicate. Those opposed? The motion is defeated.

I've received indication of a second motion by the New Democrats to this section of the bill.

Mr Silipo: I move that subsections 27(2) and (3) of the bill be struck out and the following substituted:

"(2) Subsections 447.3(5) and (6) of the act, as enacted by the Statutes of Ontario, 1998, chapter 3, section 30, are repealed and the following substituted:

"When bylaws may be passed etc

"(5) Subsection 447.44(5) applies, with necessary modifications, with respect to the passing, amending or repealing of a bylaw under subsection (1)."

This is similar to the previous motion.

The Acting Chair: Any comments? Seeing none, we should move to a vote on this amendment. All those in favour of Mr Silipo's amendment, please indicate. Those who are opposed? That motion is defeated as well.

I've received notice of a government motion to amend section 27.

Mr Baird: I move that subsection 447.3(8) of the Municipal Act, as set out in subsection 27(4) of the bill, be struck out and the following substituted:

"Exempt property deemed not in classes

"(8) The commercial classes and the industrial classes both within the meaning of subsection 363(20) and the multi-residential property class shall be deemed, for the purposes of this part, to not include property exempted from the application of this part."

This amendment deals with the exclusion of property from the 2.5% cap and would ensure that farmland awaiting development that is classified as multi-residential is excluded from the 2.5% cap. Obviously farmland awaiting development already has a favourable tax rate.

The Acting Chair: Are there any questions or comments in relation to the amendment? I'd like to now vote on Mr Baird's amendment. Those in favour of Mr Baird's amendment, please indicate. Those opposed? The amendment is carried.

Shall section 27, as amended, carry? All in favour? Those opposed? Section 27 is carried.

Now dealing with section 28, I've received notice of an NDP motion related to section 28.

Mr Silipo: I move that section 28 of the bill be struck out and the following substituted:

"28. Section 447.4 of the act, as enacted by the Statutes of Ontario, 1998, chapter 3, section 30, is repealed and the following substituted:

"Restrictions if bylaw passed

"447.4 Paragraphs 1 to 4 of section 447.45 apply, with necessary modifications, if the council of a municipality passes a bylaw under subsection 447.3(1) to make this part apply for a year."

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This amendment allows municipalities to opt into the 2.5% caps in any of the three years envisioned by this legislation, 1998, 1999 or 2000, and of course this is something that is looking forward from here and allowing, as I was making the argument earlier on the other amendment, municipalities the greater flexibility of opting in, not just for the three-year term but to be able to pick whether they ought to do that for one or all of those years or two of those years, for example.

The Acting Chair: Does anyone else wish to speak to Mr Silipo's amendment? We should vote now on Mr Silipo's amendment. All in favour? Those opposed? The amendment is defeated.

Shall section 28 carry? All in favour? Those opposed? Section 28 is carried.

Section 29: I've received no indication of amendments. Shall section 29 carry? All in favour? Those opposed? Section 29 is carried.

Now dealing with section 30, I've received notice of a government motion.

Mr Baird: I move that section 30 of the bill be amended by adding the following as a subsection of section 447.10 of the Municipal Act:

"Application to 1998, supplementary assessments

"(5) This section also applies, with necessary modifications, with respect to the frozen assessment listing for 1998 if a further assessment of a property could have been, but was not, made under section 34 of the Assessment Act for 1997 but the increase that would have re-

sulted from that further assessment is reflected in the assessment set out in the assessment roll for 1998."

Briefly, this amendment allows increases in assessment made at the end of 1997 to be added to the frozen assessment listing for 1998. For example, if you had a parking lot in 1997 and a building was built on it, in terms of the 1998 taxes, you would just go back and basically deem that the building had been there for the calculation of the 1998 rate.

Mr Gerretsen: I'm just curious. This obviously was well known at the time the bill was first drafted, this kind of situation that you talked about where development takes place between one year and the next. Why would it not have been picked up at that point of time? It seems rather a fundamental thing.

Mr Sholtack: Most changes that occur during the year are the subject of a supplemental assessment and so they would have been picked up during 1997, but in many cases we discovered that they were just added at the end of the year and not made the subject of a supplemental during 1997. To clarify the application of both the 2.5% cap and the 10, 5, 5 cap we're making this amendment for the sake of clarity.

Mr Gerretsen: But the situation surely would have been known at the time you drafted the bill, that there was going to be additional assessment as a result of new construction etc. Why would your wording initially not have taken that into account? This isn't something that somebody brought to your attention at some point of time, unless the province really thought there was going to be absolutely no new assessment created over the next three years, that with everything they've done to the province, they've scared off any kind of development at all. But why —

Mr Tom Froese (St Catharines-Brock): Give me a break.

Mr Gerretsen: I'd like somebody to explain that to me. How somebody could not have picked this up when the bill was drafted is a little bit beyond me, and I want somebody to explain that to me. I don't think your explanation is — you're saying why it was done and I'm asking why it wasn't done when the bill was first drafted because there's always new additional assessment every year, even in the worst of times. I guess nobody is going to answer that. Thank you.

Ms Lalonde: If I might respond, this is something we spoke about at a staff level with municipal representatives. There is a facility to pick up new assessment under existing provisions. This is another flexible provision to allow assessments to be picked up in another way that could prove to be faster and more efficient for the purposes of municipalities looking at the new tools in Bill 79. It's not that there weren't other provisions available in previous legislation, it's just that municipalities have asked for another flexible way to pick it up for efficiency purposes and that's why we proposed the amendment, it was for municipalities.

Mr Gerretsen: Thank you very much. I've got the answer now. It took me a while to get that, but I appreciate that.

The Acting Chair: Are there any other comments relating to Mr Baird's motion? I'd like to now vote on Mr Baird's motion. All in favour, please indicate. Those opposed? I declare the motion carried.

Shall section 30 of the bill, as amended, carry? All in favour? Those who are opposed? Section 30, as amended, is carried.

Moving to section 31 of the bill, I have received notice of an NDP motion to amend section 31.

Mr Silipo: I move that section 31 of the bill be struck out and the following substituted:

"31(1) Paragraphs 5 and 6 of subsection 447.15(1) of the act, as enacted by the Statutes of Ontario, 1998, chapter 3, section 30, are repealed and the following substituted:

"5. The 1997-level taxes shall be adjusted by making the adjustments, if any, under a bylaw under subsection (5) in respect of changes in taxes for municipal purposes.

"6. The taxes for the property equal the 1997-level taxes, as adjusted under paragraphs 3, 4 and 5.

"(2) Subsections 447.15 (5) and (6) of the act, as enacted by the Statutes of Ontario, 1998, chapter 3, section 30, are repealed and the following substituted:

"Bylaws, adjustments for municipal taxes

"(5) The council of a municipality, other than a lower-tier municipality, may pass a bylaw providing for adjustments under paragraph 5 of subsection (1) in respect of changes in taxes for municipal purposes.

"Adjustments must be equal

"(6) A bylaw under subsection (5) must ensure that the total adjustments under the bylaw are equal, for each property class, to the adjustments that would have resulted if the provisions referred to in subsection (8) applied."

I know that's perfectly clear. With these amendments, as you look at the wording needed to bring something into effect, it doesn't sound anything like what the result would be. This ensures that the 2.5% cap that has been put in place, or will be put in place, applies to assessment-based tax changes only. Throughout this whole debate, we have been consistent, I hope, in taking the position that while we believe that assessment-related increases ought to be limited, and we're glad to see the 2.5% caps brought in, we also think it's not appropriate for those caps to be applied on the overall tax bill, because that then simply shifts the burden on to the residential property taxpayers, and we think property taxpayers should be treated fairly and equally in that sense. This reiterates that position of ours, and the next amendment is essentially the same with respect to ensuring that the 2.5% caps would be applied only to assessment-based increases.

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Mr Baird: I'm surprised at this, that there is support, not just among the New Democrats but among the Liberal Party, for allowing the taxes on small business people in the city of Toronto to go forward.

Mr Silipo: Mr Baird, the last thing you can claim is to be supporting the small business people in Toronto or anywhere else when it comes to property taxes, given the fact that until your government was pushed into it, you were going to let a lot of them go out of business.

We're trying to be fair here. We're trying to suggest that in fact the mess you've caused is related to the new assessment scheme and that's where the caps ought to be applied. With respect to the normal increases in terms of the municipality's budget — and this is not just a Toronto issue here; this presumably will apply in other places where people opt for the 2.5% caps as opposed to the 10%, 5% and 5% — there should be a distinction between the normal budgetary increases that a municipal council goes through, and they are in the best position to deal with that issue in terms of how they pass that on, and we ought not to be simply shifting costs from one group to another, as the 2.5% cap in its present format would do.

Mr Baird: Those small business people fought for a 2.5% cap, Mayor Lastman and council endorsed that, and with that came a three-year tax freeze. The concern is that with all the tax cuts they've got from not having to pay the employer health tax for small businesses of under \$400,000, this could try to tax back the 50% tax cut in the corporate taxes for small business. It's just not something the government supports.

The Acting Chair: Is there any further discussion? I would like to now vote on the amendment. All in favour of Mr Silipo's motion, please indicate. Those who are opposed? The amendment is defeated.

Shall section 31 carry? All in favour? Those opposed? Section 31 is carried.

Moving now to section 32 of the bill, I have received notice of an NDP amendment to section 32.

Mr Silipo: I move that section 32 of the bill be struck out and the following substituted:

"32(1) Paragraph 3 of subsection 447.16(2) of the act, as enacted by the Statutes of Ontario, 1998, chapter 3, section 30, is repealed and the following substituted:

"3. The commercial and residential mill rates shall be adjusted in accordance with subsection (4) to reflect any changes in the taxes needed for municipal purposes from 1997 to 1998 for the property class the property is in.

"(2) Paragraph 2 of subsection 447.16(3) of the act, as enacted by the Statutes of Ontario, 1998, chapter 3, section 30, is repealed and the following substituted:

"2. The adjusted commercial and residential mill rates shall be further adjusted in accordance with subsection (4) to reflect any changes in the taxes needed for municipal purposes from the previous year to the current year for the property class the property is in.

"(3) Subsections 447.16 (4) and (5) of the act, as enacted by the Statutes of Ontario, 1998, chapter 3, section 30, are repealed and the following substituted:

"Municipal tax changes

"(4) The following apply with respect to the adjustments, under paragraph 3 of subsection (2) and paragraph 2 of subsection (3), of the adjusted mill rates to reflect

changes in the taxes needed for municipal purposes for the property class the property is in:

"1. If the property is not in an upper-tier municipality, the part of the mill rates, as adjusted, that were derived from mill rates for municipal purposes shall be adjusted by the percentage change, if any, in the total amount to be raised for municipal purposes by property taxes from the previous year to the current year on property in the property class.

"2. If the property is in an upper-tier municipality,

"i. the part of the mill rates, as adjusted, that were derived from mill rates for upper-tier purposes shall be adjusted by the percentage change, if any, in the total amount to be raised for upper-tier purposes by property taxes from the previous year to the current year on property in the property class in the upper-tier municipality, and

"ii. the part of the mill rates, as adjusted, that were derived from mill rates for lower-tier purposes shall be adjusted by the percentage change, if any, in the total amount to be raised for lower-tier purposes by property taxes from the previous year to the current year on property in the property class in the lower-tier municipality.

"3. For the purposes of determining, under paragraphs 1 and 2, the percentage change in the total amount to be raised by property taxes from one year to the next year on property in the property class, the following apply,

"i. for the comparison from 1997 to 1998, the total amount for 1997 shall be determined using the taxes levied for 1997 on all the property that, for 1998, is classified in the property class and the total amount for 1998 shall be determined using the taxes that would be levied for 1998, if this part did not apply, on the same property,

"ii. for the comparison from 1998 to 1999 or from 1999 to 2000, the total amount for each year shall be determined using the taxes that would be levied for that year, if this part did not apply, on all the property that, for that year, is classified in the property class.

"Regulations

"(5) The minister may make regulations providing for decreases, in addition to adjustments under subsection (4), in the mill rates for properties prescribed in the regulations in the circumstances prescribed in the regulations and modifying the application of subsection (4) with respect to other properties in the same property class as the prescribed properties."

This is an amendment that follows from the point I made in the previous one, dealing with the 2.5% cap applying only to assessment-based changes.

The Acting Chair: There's your last amendment?

Mr Silipo: I'm sorry?

The Acting Chair: There's your last amendment?

Mr Silipo: That's it.

The Acting Chair: Is there any discussion related to Mr Silipo's proposed amendment?

Mr Baird: Again, this is another amendment that would allow businesses in Toronto to pay tax increases in 1999 or 2000, and I've got a real problem with that. Toronto council made the decision to freeze taxes for three

years on the commercial and industrial classes. That has been part of the fight these small business people waged. I can appreciate that there's a difference of opinion between us. This is just basically enacting amendments 7, 8, 10 and 12. I'm interested in how the official opposition will vote, because the Liberals voted in favour of 7, 8 and 9 but then abstained on 12. So we'll watch this with interest, whether they want to see tax increases in the city of Toronto.

Mr Gerretsen: Since you're asking questions, let me ask you one. Are you saying, then, that any tax increases are to be paid for by the residential taxpayers in the years 1999 and 2000? Could you give me a direct answer on that, yes or no.

Mr Baird: I'm saying I trust Mayor Lastman and his commitment to hold the line on tax increases. He was able to do it in the city of Toronto. In Ottawa-Carleton, Bob Chiarelli is committed to doing it. In Nepean, they cut taxes. So, where there's the will, there's the way. If you want to freeze taxes or cut them, the leadership comes from the top; that's what it takes to make it happen.

Mr Gerretsen: So, you're in favour of less municipal services, then?

Mr Baird: I'm in favour of municipalities holding the line on taxes. In Nepean this year, 1998, they cut taxes by 2%. There was a significant debate whether they should have been cut by 5%. Ottawa-Carleton brought in a 0% tax increase, as did the city of Toronto. I applaud those hard-working municipal politicians who provide leadership in freezing taxes. People have hit the tax wall. They don't have any more money to pay. It's not a question that they don't want to pay any more money, it's that they don't have any more money to pay. That's why, whether it's Mayor Lastman in Toronto or Mayor Watson in Ottawa, I applaud those municipal leaders, of all political stripes, by the way, who have drawn the line in the sand and said they're not prepared to raise taxes.

Mr Gerretsen: You're great at making statements, but you're not answering any of the questions. If you feel the way you do, why the heck didn't the government just impose on municipalities that they couldn't have any tax increases for the years 1999 and 2000? Could you explain that?

Mr Baird: Gary Carr had a good private member's resolution on that very issue in the House not too many years ago.

Mr Gerretsen: I'm not talking about a private member's resolution; I'm talking about the government's position on this.

Mr Baird: I voted for a regional chair candidate who made a commitment to hold the line on taxes at 0%. I voted for a mayor who committed to keep taxes at 0%. I voted for a city councillor. They've all delivered.

Mr Gerretsen: Mr Baird, you're still not answering the question. I've got a very simple question: Why didn't the government come up with a bill to freeze all taxes at the municipal level for the years 1999 and 2000? That would certainly implement what you're saying right now.

Mr Baird: Certainly Bill 16 froze them on the commercial-industrial at 2.5%. I appreciate this difference of

opinion. You and the Liberal party voted for three amendments to allow tax increases. I can appreciate that there's a difference of opinion there. I disagree. I'm not one of the people who support that.

Mr Gerretsen: Would you answer the question? Why didn't the government bring in legislation imposing tax freezes for municipalities for the years 1999 and 2000?

Mr Froese: Then you'd be complaining about that.

Mr Gerretsen: I'm sorry?

Mr Froese: Then you'd be complaining about that.

Mr Gerretsen: You simply refuse to answer the question.

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Mr Baird: The local municipalities have that flexibility. The local municipality in Toronto chose the 2.5% cap. One of the parts of the 2.5% cap was the tax freeze. We've cut taxes 66 times. If we can find the will to cut taxes 66 times, whether it's on small business, whether it's on income tax, whether it's on payroll taxes, we hope there will be municipal leaders who will do the same.

In this case, we're dealing with Mr Silipo's amendment. In the city of Toronto, Mr Lastman did have the leadership and the courage to hold the line on taxes in the residential area in the first year. I have every confidence that that leadership will continue in 1999 and 2000. Certainly there's a real hope in Ottawa-Carleton that we're going to be able to do the same thing. There are some councillors in Nepean who want to see a further tax cut this year. The 2% last year wasn't enough. They want to go sharpen their pencils again and see if they can deliver another tax cut. Certainly, if they can find a way to do it, I'm fully supportive.

Mr Gerretsen: I think you just put your finger right on it when you said you want to give municipalities more flexibility.

Mr Baird: But they chose that. Toronto chose the 2.5% cap. They chose it. One of the features of the 2.5% cap was that you had to freeze taxes. The Toronto city council supported that in pretty overwhelming numbers, as did the small business people who pushed for it.

Mr Gerretsen: You're great at making statements, but you don't answer any questions.

The Acting Chair: Any other comments relating to Mr Silipo's motion? We should vote on the motion now. All of the members who are in favour?

Mr Baird: Recorded vote.

Ayes

Silipo.

Nays

Baird, DeFaria, Froese, Rollins.

Mr Phillips: Abstaining. This bill is such a mess that it's non-fixable, and that's what the clerks and treasurers say.

Mr Froese: No amendment.

The Acting Chair: Order. The amendment is defeated.

Mr Phillips: If you look at the clerks and treasurers —

Mr Gerretsen: You don't even know what the bill is about; you haven't got a clue.

Mr Phillips: Finally we're hearing from the government members.

The Acting Chair: Order.

Mr Phillips: I wouldn't support this government's tax bills on a bet. You guys have screwed it up completely.

Mr Froese: You're not even putting any amendments through.

Mr Phillips: You've screwed it up.

Mr Froese: Yeah, right.

Mr Phillips: Completely.

Mr Froese: Give me a break.

The Acting Chair: I'd like to call the members to order.

Mr Phillips: That's not what I say; that's what the clerks and treasurers say.

The Acting Chair: Mr Phillips, please.

Shall section 32 of the bill carry? All in favour? Those opposed? Section 32 is carried.

Moving now to section 33 of the bill. I've received notice of an amendment by the government to section 33.

Mr Baird: I move that section 33 of the bill be amended by adding the following subsection:

"(2) Section 447.19 of the act, as enacted by the Statutes of Ontario, 1998, chapter 3, section 30, is amended by adding the following subsection:

"Modifications, omissions from 1997 assessment

"(7) If any increases are made under section 33 of the Assessment Act to the assessment for the property for 1997, the uncapped 1998 taxes shall be what they would be if the corresponding changes were made to the assessment on the assessment roll used to determine the uncapped 1998 taxes."

This amendment is complementary to the one we passed three or four amendments ago. I used the example of a parking lot to the building. This would deal, for example, with a particular floor in a building that may have been missed in 1997 and allows the commensurate recalculation.

The Acting Chair: Any discussion relating to Mr Baird's motion?

Mr Gerretsen: It relates to Mr Baird's motion and also some of the earlier comments. I would just like to quote you one sentence from the letter dated December 2 from AMO, the Association of Municipal Clerks and Treasurers of Ontario, the Municipal Finance Officers' Association of Ontario and the Association of Municipal Tax Collectors of Ontario in which they state, "We believe that Bill 79 will not achieve the objective of providing fairness for property taxpayers and will create more problems than it solves." They basically recommend that you go back to the drawing board, do it right this time, get people involved right from the outset and hold some public hearings on it.

Mr E.J. Douglas Rollins (Quinte): How many times have you read that now, John?

The Acting Chair: Order.

Mr Gerretsen: Twice.

The Acting Chair: Order. Mr Phillips.

Mr Gerretsen: Why aren't you listening to these people?

The Acting Chair: Mr Phillips has the floor.

Mr Phillips: On the same comment, the organizations, the people who have to work with this, who understand this, are our municipal politicians, they're our senior municipal civil servants, the municipal tax collectors and the municipal finance. They've all looked at this thing and they say this bill "is an overreaction to a manageable number of property tax increases. Our evaluation is that it does not afford the protection for small businesses that it was intended to provide. Our associations are opposed in principle to Bill 79 in its entirety."

If you track the comments from these groups from the start, they have been the ones who had been warning us about the problems that the government is creating. So you want us to support a bill that the people who have the responsibility for making it work say is unworkable.

Not only are you creating a mess; you won't even allow the people who could perhaps fix this bill to come before us. They're required to sit behind closed doors and talk with the government. When the government members wonder why we in the opposition get upset, it's that this is the seventh mess that you've forced through the Legislature, and you are duly warned this is going to compound the mess.

Mr Baird: The one concern I have is when I hear this group has used the word "manageable." When I talked to small business people in Richmond who might have a small business in the Richmond mall, it wasn't manageable for them. When I talked to a small business person in Greely or in Manotick or Stittsville, it sure wasn't manageable for them. When the member for York-Mackenzie, Mr Klees, talks about the small businesses in his region, it wasn't manageable for them. I can appreciate there will be legitimate and honest differences of opinion about whether it's manageable.

The majority of municipalities didn't use any of the tools. Some of the municipalities at least made every effort, whether it was Halton or Ottawa-Carleton — certainly Toronto, a 100% effort — to use the tools the province gave them to a positive result for small business people. Other municipalities chose to do nothing; in fact, the majority of municipalities chose to do nothing. When a majority of municipalities choose to do nothing and the group that represents these folks says it's manageable, I think there's room for honest difference of opinion.

Mr Phillips: If Mr Baird would take the time to reread the submissions that these groups made, they said you were creating a mess, they begged you not to create the mess, and you created the mess. To blame them is wrong. They warned you about the mess and now they're warning you again you're creating another mess.

You create the mess, and Mike Harris and the group will live with it.

The Acting Chair: Any further discussion related to Mr Baird's motion to amend section 33? I'd like to now propose that we vote on Mr Baird's motion. All in favour of Mr Baird's motion, please indicate. Those who are opposed? The motion is carried.

We'll now vote on section 33, as amended. All in favour? Those who are opposed? Section 33, as amended, is carried.

I have received no indications of intentions to move amendments to section 34. I'd like us to now vote on section 34. All in favour of section 34? All those opposed? Section 34 is carried.

Moving now to section 35, I've received no indication of amendments to section 35. All in favour of section 35? Those who are opposed? Section 35 is carried.

Moving now to section 36, I have received indication of an intention to move an amendment to section 36 by the government side.

1120

Mr Baird: I move that section 36 of the bill be amended by adding the following subsection:

"(2) Subsection 447.30(1) of the act, as enacted by the Statutes of Ontario, 1998, chapter 3, section 30, is amended by adding the following paragraph:

"7. Paragraph 4 applies, with necessary modifications, with respect to the mill rate applied under paragraph 5 of section 447.21 to determine the taxes levied under paragraph 1."

This is an amendment coming from the city of Toronto with respect to adjusting the interim levy for the multi-residential class. This amendment would ensure that 1999 and 2000 interim levies for multi-residential properties equal 50% of the previous year's taxes.

The Acting Chair: Any comments or questions relating to Mr Baird's amendment?

Mr Silipo: Just a question as to why this is needed.

Mr Sholtack: The council of the city of Toronto was unsure as to whether the effect of 447.21, which describes the application of the 2.5% cap to multi-res, was clear enough with respect to how the interim levies are to be calculated. This amendment is to clarify the application of that to multi-res properties.

The Acting Chair: Any further questions or comments relating to Mr Baird's amendment to section 36? All in favour of Mr Baird's motion, please indicate. Those who are opposed? The amendment carries.

Shall section 36, as amended, carry? All in favour? Those who are opposed? Carried.

Moving now to section 37, I have a number of amendments. I'll call first on Mr Baird, who has indicated notice of intention to move an amendment.

Mr Baird: I move that subsection 447.36(2) of the Municipal Act, as set out in section 37 of the bill, be amended by striking out "section 447.39" at the end and substituting "section 447.43." This is just a typographical error.

The Acting Chair: Any discussion? Seeing none, shall Mr Baird's motion to amend the bill carry? All in favour? Those opposed? I declare the motion carried.

Mr Baird: I move that subsection 447.37(1) of the Municipal Act, as set out in section 37 of the bill, be struck out and the following substituted:

"Property that part applies to

"447.37(1) This part applies with respect to property in the commercial classes, the industrial classes and the multi-residential property class."

Just to indicate the purpose, this would be the issue of including multi-residential property classes. This is one of 11 amendments to add them. Obviously, multi-res are commercial-industrial, and many times they're operated by small business people. This is the start of 11 amendments to add them in, as the minister said he would when he introduced the bill.

The Acting Chair: Any further discussion to Mr Baird's amendment? Seeing none, I'll call the vote. All in favour of Mr Baird's amendment? Those opposed? The amendment is carried.

I want to advise the members that the next amendment in your package is a Liberal amendment, and I've been advised by the clerk that it is out of numerical order. It's technically, I believe, in order, but it's out of numerical order, so we're going to deal with it later on, after page 27 of your amendment package. We're going to set it aside and deal with it after we deal with an NDP motion, which you have as page 27 in your amendment packages.

The next amendment we will deal with is one that is proposed by the New Democrats.

Mr Silipo: I move that subsection 447.37(1) of the Municipal Act, as set out in section 37 of the bill, be struck out and the following substituted:

"Property that part applies to

"447.37(1) This part applies with respect to property in the commercial classes, the industrial classes, the residential/farm property class and the multi-residential property class."

This does in effect what Mr Baird pointed out earlier with respect to the multi-residential, but it also, and significantly, proposes that the residential and farm property classes also become subject to the caps. We understand and support the rationale for bringing multi-residential properties under the cap. We think the same rationale should apply to residential and farm property classes.

Mr Baird: Briefly to address that, this is one obviously on which there's been discussion before. When we dealt with Bill 16 I think you had the same issue. There are a number of tools for the residential class. Your phase-in is the biggest one. It's not a tool, for example, that I support in my own community. We had a fairly up-to-date assessment valued at 1988 valuations, so I certainly didn't support its being used in my community, but in Toronto we've had terrifically uneven assessments, some dating back to the 1940s, as I understand it. There's greater concern. That's why there is the option for an up-to-eight-year assessment.

Toronto council has spent a terrific amount of time dealing with this and chose the five-year phase-in. As well, I'd point out there are issues that relate to low-income seniors and the disabled under the existing legis-

lation, and there are tools for municipalities to help mitigate these changes.

Mr Silipo: I've been watching the situation and experiencing it first hand in terms of constituents who have come into my office. By way of example, these are people who are having to pay, seniors and others, increases in amounts of \$300-plus this year and some of them are looking at similar increases next year. It just boggles the mind that with all the tools that are there this is still happening.

I believe the simplest, most straightforward and fairest approach is to say, "Let's apply the same rules to all the different property classes." If there's a good rationale, and there is, for capping increases at 10% or 5%, as the case may be, or 2.5% under the other scheme for certain classes, then that same rationale should apply to all property tax classes and all property taxpayers.

The government has seen fit to extend that to multi-residential. We think they should go one step further and see the wisdom in extending that also to the residential and the farm property tax classes.

The Acting Chair: Any more comments to Mr Silipo's motion? We'll move now to vote on Mr Silipo's motion.

Mr Baird: Could I ask for a five-minute deferment of the vote?

The Acting Chair: A five-minute recess? Is that what you're calling?

Mr Baird: Yes.

The Acting Chair: OK, I'm prepared to grant a five-minute recess. It is now 11:32 and we will resume this committee's deliberations at 11:37. The committee is in recess.

The committee recessed from 1129 to 1135.

The Acting Chair: I'd like to end the recess and resume the meeting. We'd ask committee members to come forward and resume their seats.

I ask all those who are in favour of Mr Silipo's motion —

Mr Silipo: A recorded vote, Mr Chair.

Ayes

Silipo.

Nays

Baird, Froese, Rollins.

The Acting Chair: The motion is defeated.

The next amendment I wish to deal with is a government amendment.

Mr Baird: I move that subsection 447.37(2) of the Municipal Act, as set out in section 37 of the bill, be amended by adding the following clause:

"(c) the multi-residential property class in a municipality if part XXII.1 applies with respect to the multi-residential property class in the municipality."

This is the second of 11 amendments to insert "multi-residential".

The Acting Chair: Is there any discussion on Mr Baird's amendment? Seeing none, I will call the question. All those who are in favour of Mr Baird's amendment, please indicate. Those who are opposed? The amendment is carried.

The next amendment I have is a New Democrat amendment.

Mr Silipo: I believe it's the same amendment, Mr Chair. It's the one we just passed.

Mr Baird: It should be noted that we passed an NDP amendment.

Mr Silipo: We just wanted to make sure that the commitment the minister made was actually going to be here in front of us, so we thought we'd put an amendment.

Mr Baird: A promise made, a promise kept, Mr Silipo.

The Acting Chair: Dealing with a government motion next.

Mr Baird: I move that subsection 447.37(4) of the Municipal Act, as set out in section 37 of the bill, be amended by striking out "the commercial property class and the industrial property class" in the fifth and sixth lines and substituting "the commercial property class, the industrial property class and the multi-residential property class."

The Acting Chair: Any discussion? Seeing none, I'll call the question. All those in favour of Mr Baird's motion? Those who are opposed? The amendment is carried.

Next I have an NDP motion.

Mr Silipo: I move that subsection 447.37(4) of the Municipal Act, as set out in section 37 of the bill, be amended by striking out "the commercial property class and the industrial property class" in the fifth and sixth lines and substituting "the commercial property class, the industrial property class, the residential/farm property class and the multi-residential property class."

This does the same as Mr Baird indicated on the previous amendment, but it inserts the important residential class for the reasons that I indicated earlier.

The Acting Chair: Any discussion?

Mr Silipo: A recorded vote on this as well.

Ayes

Silipo.

Nays

Baird, Froese, Rollins.

The Acting Chair: The amendment is defeated.

The next amendment I have is a government motion.

Mr Baird: I move that subsection 447.37(5) of the Municipal Act, as set out in section 37 of the bill, be amended by striking out "the commercial classes and the industrial classes" in the third and fourth lines and substituting "the commercial classes, the industrial classes and the multi-residential property class."

This is the third amendment dealing with the multi-residential class, to add it to the commercial and industrial assessment.

The Acting Chair: Is there any discussion relating to Mr Baird's motion? I'll call the vote. All in favour of the motion put forward by Mr Baird? Those who are opposed? The motion is carried?

I have an NDP amendment in front of me.

Mr Silipo: I move that subsection 447.37(5) of the Municipal Act, as set out in section 37 of the bill, be amended by striking out "the commercial classes and the industrial classes" in the third and fourth lines and substituting "the commercial classes, the industrial classes, the residential/farm property class and the multi-residential property class."

Again, this adds the residential and the farm property classes to the classes listed.

The Acting Chair: Any discussion relating to Mr Silipo's amendment? Seeing none, I'll call the question. All in favour of Mr Silipo's amendment? Those who are opposed? The amendment is defeated.

I have a government motion in front of me.

Mr Baird: I move that subsection 447.37(11) of the Municipal Act, as set out in section 37 of the bill, be amended by striking out "the commercial classes and the industrial classes" at the beginning and substituting "the commercial classes, the industrial classes and the multi-residential property class."

The Acting Chair: Is there any discussion relating to Mr Baird's motion? Seeing none, I'd like to call the question. All in favour of Mr Baird's motion, please indicate. Those who are opposed? The motion is carried.

Next I have an NDP motion in front of me.

Mr Silipo: I move that subsection 447.37(11) of the Municipal Act, as set out in section 37 of the bill, be amended by striking out "the commercial classes and the industrial classes" at the beginning and substituting "the commercial classes, the industrial classes, the residential/farm property class and the multi-residential property class."

Again, this adds the residential and farm property classes to the caps.

The Acting Chair: Any discussion? All in favour of Mr Silipo's motion? Those who are opposed? The motion is defeated.

Next I have a Liberal motion. This is the motion out of numerical order which we're now going to deal with at this time.

Mr Gerretsen: Section 37 of the bill, (section 447.37.1 of the Municipal Act):

I move that part XXII.2 of the Municipal Act, as set out in section 37 of the bill, be amended by adding the following section:

"Halton exempt

"447.37.1 This part does not apply with respect to the regional municipality of Halton."

I am just initially saying that this is an amendment that the four Conservative members in the Halton area spoke in favour of and supported their regional council on and

indicated in the Halton area that they wanted to see passed. The four chambers of commerce in Halton were in favour of this as well, because apparently the regional municipality of Halton has used the tools and has come up with what the regional municipality regards as an equitable solution to everyone. Since the four Conservative members from Halton were not prepared to move this as an amendment, we were, and we would just ask that everybody here support it.

Mr Froese: Why didn't you include Kingston in it?

Mr Gerretsen: Kingston didn't ask for it.

Mr Baird: There are a lot of municipalities, even a majority of municipalities, across the province that didn't use any of the tools. I think that caused a terrific amount of concern not just to the provincial government but obviously to small business people around the province. I think it's important that whenever we lay the blame we also recognize the good actors. I want to put on the record and recognize that Halton has really worked hard at protecting their small businesses and was a good actor in this process. I think particularly of the regional chair, Joyce Savoline, who deserves some credit. We're prepared to continue to work with Halton. We've had a good number of meetings with them already on this issue.

If this motion were to pass, though, there are some 200 businesses that would face, in some cases, significantly more than 15%, which is the number there, as I understand. We in the Conservative Party don't want to leave anyone behind. We want everyone on board and we want to protect every small business around the province. To pass this would basically leave those 200 small business people behind, and that's obviously of paramount concern since small business people are the economic engine of Ontario and they're helping drive those impressive job creation numbers we're seeing every month.

Mr Gerretsen: Just so that I'm clear then, the government does not support its own four Conservative backbenchers who are supporting this amendment. Would Mr Baird like to answer that? You do not support your own Conservative members in the region of Halton.

Mr Baird: I'm a big supporter of all four of those Conservative members. They're very good, hard-working members.

Mr Gerretsen: But not on this particular issue. You do not support your own members. I think the record should clearly show that.

Mr Rollins: Let the record be clear. The record will clearly show your statement on that.

Mr Baird: I should say that there are also a lot of businesses in malls in addition to the 200 that wouldn't be protected. It's important to put that on the record as well. That's obviously a concern. We want to ensure that not just the vast majority but everyone is protected.

Mr Gerretsen: I would like a recorded vote so that we will know whether or not the government members support the members of their own caucus.

Ayes

Gerretsen, Phillips, Silipo.

Nays

Baird, DeFaria, Froese, Rollins, Wettlaufer.

The Acting Chair: The motion is defeated.

Mr Gerretsen: I will pass the message along to the four Conservative backbenchers.

Interjections.

The Acting Chair: Order.

I have an amendment before me to section 37 of the bill which I understand is about to be moved by the government side.

Mr Baird: I move that section 447.38 of the Municipal Act, as set out in section 37 of the bill, be struck out and the following substituted:

"Frozen assessments

"447.38(1) Sections 447.5 to 447.13 apply as though they formed part of this division with the modifications in this section and such other modifications as are necessary.

"Minimum business assessment

"(2) If the business assessment for a property is less than 30% of the commercial assessment for the property, the business assessment shall be increased so that it is equal to 30% of the commercial assessment.

"Application of business assessment

"(3) Subsection (2) applies only to property in the commercial classes or industrial classes and does not apply to a property that was used exclusively for the parking of vehicles at the end of 1997."

Just to provide some explanation, members will recall that earlier we dealt with an amendment dealing with the eight-year phase-in and the payments-in-lieu properties. This is a similar amendment along that line.

The Acting Chair: Comments or questions? Seeing none, we'll call the question. All in favour of Mr Baird's motion, please indicate. Those who are opposed? The motion is carried.

Next I have an NDP motion to section 37 of the bill.

1150

Mr Silipo: I move that division A of part XXII.2 of the Municipal Act, as set out in section 37 of the bill, be amended by adding the following section:

"Residential property

"447.38.1(1) Section 447.21 applies as though it formed part of this division with the modifications in this section and such other modifications as are necessary.

"Modification

"(2) Paragraphs 4 and 5 of section 447.21 do not apply.

"Extension to residential/farm

"(3) Section 447.21 also applies with respect to the residential/farm property class."

Again, this extends the 10, 5 and 5 caps to the residential/farm property class.

The Acting Chair: Any discussion? Seeing none, I'll call the question. All in favour of Mr Silipo's motion, please indicate. Those opposed? The motion is defeated.

I have yet another government motion to section 37.

Mr Baird: I move that section 447.39 of the Municipal Act, as set out in section 37 of the bill, be amended by adding the following paragraph:

"0.1 Section 447.21, paragraphs 1, 2 and 3 (multi-residential property class)."

Mr Gerretsen: Could you give us the reason for that?

Mr Baird: That is one of the 11 amendments to insert "multi-residential property class" alongside commercial and industrial that the minister announced when he introduced the bill. I believe it is the seventh one of 11 to insert that in the bill in 11 different places.

The Acting Chair: Any further discussion? I'll call the question. All in favour of Mr Baird's motion, please indicate. Those who are opposed? The motion is carried.

I have in front of me another government motion.

Mr Baird: I move that subsection 447.42(2) of the Municipal Act, as set out in section 37 of the bill, be amended by inserting, after "section 447.11" in the eighth line, "paragraph 3 of section 447.21".

Again, that's dealing with the multi-residential issue.

Mr Wayne Wettlaufer (Kitchener): Could we have a recorded vote on this, Mr Chair, please.

Ayes

Baird, DeFaria, Froese, Rollins, Silipo, Wettlaufer.

The Acting Chair: The motion is carried.

I believe the next amendment in your package is an NDP amendment which is identical to the one we just passed; therefore, it is out of order.

Mr Baird: The government has adopted a second NDP amendment, for the hard-working member for Dovercourt.

The Acting Chair: I have next in front of me a government motion.

Mr Baird: I move that subsection 447.44(2) of the Municipal Act, as set out in section 37 of the bill, be amended by adding the following paragraph:

"3. The multi-residential property class".

The Acting Chair: Any discussion?

Mr Wettlaufer: Recorded vote.

Ayes

Baird, DeFaria, Froese, Rollins, Silipo, Wettlaufer.

The Acting Chair: The motion is carried.

Next I'll call on the NDP.

Mr Silipo: I move that subsection 447.44(2) of the Municipal Act, as set out in section 37 of the bill, be amended by adding the following paragraphs:

"3. The residential/farm property class.

"4. The multi-residential property class."

This again inserts "residential/farm property class" into the equation of the classes to be covered under the caps. I'd like a recorded vote on this.

The Acting Chair: First of all, is there any discussion related to Mr Silipo's motion? Seeing none, I'll call the question.

Ayes

Silipo.

Nays

Baird, DeFaria, Froese, Rollins, Wettlaufer.

The Acting Chair: The motion is defeated.

I have yet another government amendment to section 37.

Mr Baird: I move that section 447.49 of the Municipal Act, as set out in section 37 of the bill, be amended by adding the following subsection:

"Multi-residential property class

"(3) For property in the multi-residential property class, the 1997-level taxes shall be determined by applying the 1997 residential mill rate to the total assessment in the frozen assessment listing."

The Acting Chair: Is there any discussion?

Mr Wettlaufer: Recorded vote.

Ayes

Baird, DeFaria, Froese, Rollins, Silipo, Wettlaufer.

The Acting Chair: The motion is carried.

I'd like to call on the New Democrats.

Mr Silipo: I move that section 447.49 of the Municipal Act, as set out in section 37 of the bill, be amended by adding the following subsection:

"Residential property

"(3) For property in the residential/farm property class and the multi-residential property class, the 1997-level taxes shall be determined by applying the 1997 residential mill rate to the total assessment in the frozen assessment listing."

Again, this adds the residential and farm property classes to the mix to be covered under the cap, as per the previous amendments.

The Acting Chair: Is there any discussion relating to Mr Silipo's amendment?

Mr Silipo: Recorded vote on this too, please.

Ayes

Silipo.

Nays

Baird, DeFaria, Froese, Rollins, Wettlaufer.

The Acting Chair: The amendment is defeated.

Next I have a government motion.

Mr Baird: Do you want to start it now? I'm open in terms of your direction and that of the committee — this is a large amendment — whether we want to start it now or start it at 3:30. I'm in the committee's hands. I have no problem with —

The Acting Chair: We have about three minutes before 12 o'clock, by my watch.

Mr Gerretsen: This is such a wide-ranging amendment that it will take much longer than that.

The Acting Chair: Do you think you can read it into the record in three minutes?

Mr Baird: No.

The Acting Chair: It's my understanding that the closure motion says that we have to shut down the committee at 12 o'clock. If that's the case, I'll put the committee into recess and we'll resume sitting to deal with this issue after routine proceedings this afternoon.

The committee recessed from 1158 to 1531.

The Vice-Chair (Mr Wayne Wettlaufer): We shall continue. We have in front of us an amendment, a government motion, on Bill 79.

Mr Baird: I move that section 447.51 of the Municipal Act, as set out in section 37 of the bill, be struck out and the following substituted:

"Determination of phase-ins

"447.51(1) This section governs the determination of the phase-ins for 1998 tax changes.

Cases in which phase-ins determined

"(2) Phase-ins shall be determined for a property as follows:

"1. 1998 tax increase phase-ins shall be determined for a property if the uncapped 1998 taxes for the property are greater than the unadjusted 1997-level taxes for the property.

"2. 1998 tax decrease phase-ins shall be determined for a property if the uncapped 1998 taxes for the property are less than the unadjusted 1997-level taxes for the property.

"Determination of 1998 tax increase phase-ins

"(3) The 1998 tax increase phase-in for a property for a year shall be determined in accordance with the following:

"1. For 1998, the 1998 tax increase phase-in shall be 10 per cent of the unadjusted 1997-level taxes or such lesser amount as would be necessary to increase the unadjusted 1997-level taxes so that the unadjusted 1997-level taxes equal the uncapped 1998 taxes.

"2. For 1999, the 1998 tax increase phase-in shall be five per cent of the unadjusted 1997-level taxes or such lesser amount as would be necessary to increase the unadjusted 1997-level taxes, as increased by any 1998 tax increase phase-in for 1998, so that the unadjusted 1997-level taxes equal the uncapped 1998 taxes.

"3. For 2000, the 1998 tax increase phase-in shall be five per cent of the unadjusted 1997-level taxes or such lesser amount as would be necessary to increase the unadjusted 1997-level taxes, as increased by any 1998 tax

increase phase-ins for 1998 and 1999, so that the unadjusted 1997-level taxes equal the uncapped 1998 taxes.

"Determination of 1998 tax decrease phase-ins

"(4) The 1998 tax decrease phase-in for a property for a year shall be determined in accordance with the following:

"1. The tax decrease phase-in for the year shall be the percentage, determined under paragraph 2, of the difference between the unadjusted 1997-level taxes and the uncapped 1998 taxes.

"2. A percentage shall be determined for the purposes of paragraph 1 so that the total of the 1998 tax decrease phase-ins for the year for all the properties in the property class in the municipality equals the total 1998 tax increase phase-ins for the year for all the properties in the property class in the municipality minus the prescribed amount, if any. In this paragraph, if the property is in an upper-tier municipality, 'municipality' means the upper-tier municipality.

"3. For the purposes of paragraph 2, the commercial classes shall be deemed to be a single property class and the industrial classes shall be deemed to be a single property class.

"Definitions

"(5) In this section,

"'unadjusted 1997-level taxes', for a year, means the 1997-level taxes determined under section 447.49 for the year; ('impôts au niveau de 1997 non redressés')

"'uncapped 1998 taxes' means, in relation to a property, the following taxes, adjusted, in accordance with the regulations, in respect of reductions in taxes for school purposes and changes in taxes for municipal purposes:

"1. If this division applies to the property for 1998, the taxes for municipal and school purposes that would have been imposed for 1998 but for the application of this part.

"2. If this division first applies to the property for 1999, the taxes for municipal and school purposes that would have been imposed for 1998 if the property had been assessed and classified for 1998 as it is for 1999 and this part did not apply.

"3. If this division first applies to the property for 2000, the taxes for municipal and school purposes that would have been imposed for 1998 if the property had been assessed and classified for 1998 as it is for 2000 and this part did not apply ('impôts de 1998 non plafonnés')

"Regulations, tax change adjustments

"(6) The Minister of Finance may make regulations providing for adjustments, for the purposes of the definition of 'uncapped 1998 taxes' in subsection (5), in respect of reductions in taxes for school purposes and changes in taxes for municipal purposes.

"Different adjustments for different classes, etc

"(7) Regulations under subsection (6) may provide for different adjustments for different property classes, municipalities and properties.

"Modifications if assessment is increased

"(8) If any increases are made, under section 447.10 as it applies under section 447.38, to the assessments for the property in the frozen assessment listing for 1999 or 2000,

the unadjusted 1997-level taxes and the uncapped 1998 taxes shall be determined as follows for the purposes of the application of subsections (3) and (4) to the year and to subsequent years:

"1. The unadjusted 1997-level taxes shall be what they would be if the corresponding increases were made to the assessments in the frozen assessment listing used to determine the unadjusted 1997-level taxes.

"2. The uncapped 1998 taxes shall be what they would be if the corresponding increase were made to the assessment on the assessment roll used to determine the uncapped 1998 taxes.

"Modifications, omissions from 1997 assessment

"(9) If any increases are made under section 33 of the Assessment Act to the assessment for the property for 1997, the uncapped 1998 taxes shall be what they would be if the corresponding changes were made to the assessment on the assessment roll used to determine the uncapped 1998 taxes."

The Vice-Chair: Any discussion? I'll put the question. All in favour? All opposed? Carried.

The next amendment is a government motion.

Mr Baird: I move that subsection 447.52(2) of the Municipal Act, as set out in section 37 of the bill, be amended by striking out "subsection 447.58(1)" at the end and substituting "subsection 447.47(1)".

This fixes an incorrect subsection reference.

The Vice-Chair: Any discussion? All in favour? Opposed? Carried.

The next amendment is a government motion.

1540

Mr Baird: I move that section 447.33 of the Municipal Act, as set out section 37 of the bill, be struck out and the following substituted:

"No phase-in under section 372

"447.53 Section 447.29 applies as though it formed part of this division with such modifications as are necessary.

"Interim levy, local municipality

"447.53.1(1) Section 447.30 applies as though it formed part of this division with the modifications in this section and such other modifications as are necessary.

"Multi-residential property class

"(2) The following apply with respect to the multi-residential property class:

"1. The taxes to be levied under paragraph 1 of subsection 447.30(1) shall be determined by applying a mill rate to the total assessment in the frozen assessment listing and not as provided under paragraph 2 of subsection 447.30(1).

"2. Paragraph 4 of subsection 447.30(1) applies, with such modifications as are necessary, with respect to the mill rate applied under paragraph 1.

"3. Paragraph 7 of subsection 447.30(1) does not apply."

The Vice-Chair: Discussion? There being none, all in favour? Opposed? Carried.

The next amendment is an NDP motion.

Mr Silipo: I move that section 447.53 of the Municipal Act, as set out in section 37 of the bill, be struck out and the following substituted:

"No phase-in under section 372

"447.53 Section 447.29 applies as though it formed part of this division with such modifications as are necessary.

"Interim levy, local municipality

"447.53.1(1) Section 447.30 applies as though it formed part of this division with the modifications in this section and such other modifications as are necessary.

"Residential property

"(2) The following apply with respect to the residential/farm property class and the multi-residential property class:

"1. The taxes to be levied under paragraph 1 of subsection 447.30(1) shall be determined by applying a mill rate to the total assessment in the frozen assessment listing and not as provided under paragraph 2 of subsection 447.30(1).

"2. Paragraph 4 of subsection 447.30(1) applies, with such modifications as are necessary, with respect to the mill rate applied under paragraph 1."

This adds the residential and farm property classes to the mix, as we discussed earlier today.

Mr Baird: As we discussed earlier today, we already had this debate with respect to the residential component of caps in the same spirit of the motion.

The Vice-Chair: Further discussion? All in favour? All opposed? Defeated.

The next amendment is a government motion.

Mr Baird: I move that subsection 447.57(2) of the Municipal Act, as set out in section 37 of the bill, be amended by adding the following clause:

"(c) the multi-residential property class in a municipality if division B applies for the year with respect to that property class in the municipality."

This is just one of the amendments to insert the multi-residential class with the commercial and industrial.

The Vice-Chair: Further discussion? All in favour? Opposed? Carried.

The next amendment is an NDP motion.

Mr Silipo: I move that subsection 447.57(2) of the Municipal Act, as set out in section 37 of the bill, be amended by adding the following clauses:

"(c) the residential/farm property class in a municipality if division B applies for the year with respect to that property class in the municipality;

"(d) the multi-residential property class in a municipality if division B applies for the year with respect to that property class in the municipality."

Again, this is adding the residential and farm property classes to those categories of property taxes that should be protected by the cap.

The Vice-Chair: Further discussion?

All in favour of the motion? All opposed? It's defeated.

The next amendment is a government motion.

Mr Baird: I move that section 447.60 of the Municipal Act, as set out in section 37 of the bill, be amended by adding the following subsection:

“Multi-residential property class

“(3) For property in the multi-residential property class, the 1997-level taxes shall be determined by applying the 1997 residential mill rate to the total assessment in the frozen assessment listing.”

This is the last one with respect to the multi-residential property class.

The Vice-Chair: Further discussion?

All in favour? Opposed? Carried.

The next amendment is an NDP motion.

Mr Silipo: I move that section 447.60 of the Municipal Act, as set out in section 37 of the bill, be amended by adding the following subsection:

“Residential property

“(3) For property in the residential/farm property class and the multi-residential property class, the 1997-level taxes shall be determined by applying the 1997 residential mill rate to the total assessment in the frozen assessment listing.”

Actually, this is also on my part the last attempt at including the residential and farm property class under the classes to be protected by the cap.

The Vice-Chair: Further discussion?

All in favour? All opposed? Defeated.

The next amendment is a government motion.

Mr Rollins: Excuse me, Chair, I think we need to pass section 37.

The Vice-Chair: Sorry. Thank you very much, Mr Rollins. I went too fast on that.

Shall section 37, as amended, carry?

All in favour? Opposed? Carried.

I'm not attempting to railroad this. Now we're into section 38. There are no amendments to section 38. Shall section 38 carry?

All in favour? Opposed? Carried.

Section 39, we have an amendment, a government motion.

Mr Baird: I move that clauses (b) and (b.1) of the definition of “education funding” in subsection 234(14) of the Education Act, as set out in section 39 of the bill, be struck out and the following substituted:

“(b) from tax rates under division B other than tax rates for the purposes of paying a board's share of the costs of rebates under sections 442.1 or 442.2 of the Municipal Act or paying rebates under regulations under section 257.2.1 of this act,

“(b.1) from taxes under part XXII.1 of the Municipal Act or division B of part XXII.2 of the Municipal Act other than taxes for the purposes of paying a board's share of the costs of rebates under section 442.1 or 442.2 of the Municipal Act or paying rebates under regulations under section 257.2.1 of this act, and”

This amendment would exclude the portion of the education tax rates used to fund charitable and municipal rebates from the definition of “education funding.”

The Vice-Chair: Discussion? I'll put the question.

All in favour? Opposed? Carried.

Shall section 39, as amended, carry?

All in favour? Opposed? Carried.

Section 40: I have no amendments. Shall section 40 carry?

All in favour? All opposed? Carried.

The next amendment is a government motion.

Mr Baird: I move that subsection 257.11(17) of the Education Act, as set out in subsection 41(4) of the bill, be struck out and the following substituted:

“Amounts deemed to be education funding

“(17) Amounts paid by the minister under subsections (14) or (15), other than amounts for the purposes of paying a board's share of the costs of rebates under sections 442.1 or 442.2 of the Municipal Act or paying rebates under regulations under section 257.2.1 of this act, shall be deemed to be education funding within the meaning of subsection 234(14).”

Just to speak to it briefly, this is similar to amendment 48. It excludes the portion of the education tax rates used to fund the charitable and municipal rebates.

The Vice-Chair: Discussion?

All in favour? Opposed? Carried.

Shall section 41, as amended, carry? All in favour? Opposed? Carried.

We have an amendment to section 42. It's a government motion.

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Mr Baird: I move that the definition of “tax rates for school purposes” in subsection 257.12(1.1) of the Education Act, as set out in subsection 42(2) of the bill, be struck out and the following substituted:

“‘Tax rates for school purposes’ includes tax rates for the purposes of paying a board's share of the costs of rebates under section 442.1 or 442.2 of the Municipal Act or paying rebates under regulations under section 257.2.1 of this act.”

This amendment would clarify that education tax rates — and I guess the difference on this one is tax rates — include any tax rates for the purposes of funding the charitable municipal rebates.

The Vice-Chair: Further discussion? All in favour of the motion? Opposed? Carried.

Shall section 42, as amended, carry? All in favour? Opposed? Carried.

I have no amendments to section 43. Shall section 43 carry? All in favour? Opposed? Carried.

Section 44. We have an amendment. It's a government motion.

Mr Baird: I move that paragraphs 1 and 2 of subsection 257.12.2(6) of the Education Act, as set out in section 44 of the bill, be struck out and the following substituted:

“1. The weighted average tax rate for school purposes for the commercial classes for a municipality for a year shall be determined by adding the taxes for school purposes for the year on all property in the commercial classes in the municipality for the year, dividing that sum by the total assessment of such property, as set out in the

assessment roll returned for the year, and multiplying by 100.

"2. The weighted average tax rate for school purposes for the commercial classes for a municipality for a previous year shall be determined by adding the taxes for school purposes for the previous year on all property that is in the municipality in the current year and was in the commercial classes for the previous year, dividing that sum by the total assessment of such property, as set out in the assessment roll returned for the previous year, and multiplying by 100."

This amendment deals with the weighted average education tax rate and clarifies that the assessment on the returned assessment roll is going to be used to calculate the weighted average rate.

The Vice-Chair: Further discussion? All in favour? Opposed? It's carried.

Shall section 44, as amended, carry? All in favour? Opposed? Carried.

Section 45: We have an amendment, a government motion.

Mr Baird: I move that section 45 of the bill be struck out and the following substituted:

"45.(1) Clause 257.14(1)(d) of the act, as enacted by the Statutes of Ontario, 1997, chapter 31, section 113, is repealed and the following substituted:

"(d) providing for the apportionment and distribution of amounts levied under subsection 257.7(1) on residential property taxable for English-language public board purposes between a district school area board and a board established under section 67, where the property is in the area of jurisdiction of both boards.

"(2) Clause 257.14(1)(f) of the act, as enacted by the Statutes of Ontario, 1997, chapter 31, section 113, is repealed and the following substituted:

"(f) providing, despite any provision of this act or the Provincial Land Tax Act, that parts of territory described in subsection (2) shall be deemed, until the territory becomes or is included in a municipality, to be attached to a municipality under section 56 or clause 58.1(2)(m), for the purposes of this division and of section 21.1 of the Provincial Land Tax Act;

"(g) providing for such transitional matters as the minister considers necessary or advisable in connection with a change as to which board or municipality is required to do a thing under this division or under section 21.1 of the Provincial Land Tax Act in relation to territory without municipal organization;

"(h) governing the levying of rates under subsections 255(1) or 256(1);

"(i) providing, despite any provision of this act, the Municipal Act or the Provincial Land Tax Act, for boards and municipalities to levy, in 1999, rates for 1998 under this part on property in territory without municipal organization, subject to conditions set out in the regulation.

"(3) Subsection 257.14(2) of the act, as enacted by the Statutes of Ontario, 1997, chapter 31, section 113, is repealed and the following substituted:

"Clause (1)(f)

"(2) The territory referred to in clause (1)(f) is territory without municipal organization that, on December 31, 1997, was attached to a municipality for school purposes and that, on January 1, 1998, was not so attached.

"General or particular

"(3) A regulation under subsection (1) may be general or particular."

Briefly, this amendment will allow the Minister of Education and Training to make regulations ensuring that unincorporated territory attached to a municipality for school purposes continues to be deemed attached until these areas become municipally organized.

The Vice-Chair: Further discussion? All in favour? Opposed? Carried.

Shall section 45, as amended, carry? All in favour? Opposed? Carried.

There are no proposed amendments to section 46. Shall section 46 carry? All in favour? Opposed? Carried.

There are no amendments proposed for section 47. Shall section 47 carry? All in favour? Opposed? Carried.

There are no amendments proposed for section 48. Shall 48 carry? All in favour? Opposed? Carried.

We have an amendment to section 49, a government motion.

Mr Baird: I move that subsection 49(2) of the bill be struck out and the following substituted:

"Same

"(2) Section 3 comes into force on the day subsection 18(19) of the Ontario Property Assessment Corporation Act, 1997 comes into force.

"Same

"(2.1) Section 10 comes into force on a day to be named by proclamation of the Lieutenant Governor."

This amendment deals with the Ontario Property Assessment Corp and is a bringing into force provision for provisions related to the Property Assessment Corp.

The Vice-Chair: Further discussion? All in favour of the amendment? Opposed? Carried.

Shall section 49, as amended, carry? All in favour? Opposed? Carried.

Shall section 50, the short title of the bill, carry?

Mr Silipo: Just a couple of words, if I could, on this. I find it a bit odd that section 50 declares the short title of this act to be the Fairness for Property Taxpayers Act, 1998, in light of a number of amendments that I proposed on behalf of our caucus proposing some of the same protections for people in the residential and the farm property tax categories. We proposed a number of amendments to try to deal with the caps and to suggest that where municipalities were going to fall into these schemes that this legislation puts in front of them to provide the 10% cap to increases and then 5% for each of the subsequent two years, that those same provisions should be available to all property taxpayers, not just those on the commercial side, as strongly as we believe that measure is necessary there.

The government is not making that same provision available to taxpayers who fall on either the farm or the residential side and I just find that particularly odd. I suppose at the end of the day I'm not particularly sur-

prised by the position the government has taken on this. They continue to believe that's not a major concern.

I was a bit puzzled as to why the Liberal caucus representatives chose not to support that. I know they abstained on that, and that's fine, that's their position, but certainly we've heard from a number of taxpayer groups over the last little while indicating that, at the very least, those same provisions should be available to all taxpayers if we're going to move into this sphere to try and patch up what has been really a mess in terms of the way in which the government has handled this whole property tax reform.

I don't want to belabour the point, but I just thought it was odd that we are about to approve a section which calls this the Fairness for Property Taxpayers Act. Quite frankly, nothing could be further from the truth than using that title for this piece of legislation.

Mr Phillips: Just to comment on the same issue, the organizations that are best able to give us advice on how this will work are the Association of Municipalities of Ontario, the clerks and treasurers, the people who are responsible for tax policy and the financial officials. It's the first time I've ever seen all four groups come together and give us the advice that this bill is fundamentally flawed.

I think we're going to find we've made a significant mistake in moving forward with it. The government would have been far better advised to respond to these groups weeks ago. I was at meetings with the mayors probably eight weeks ago when they started to raise these concerns, and actually they had many proposals for the government. The government met with them behind closed doors and refused to allow them to appear here. As I said at the beginning of this committee, I think it's fundamentally wrong that the public don't have an opportunity for some comment and input.

Mr Silipo may wonder why we abstain. We abstain on the basis that the best advice we get is that this bill is fundamentally flawed and will create substantially more problems than it's going to solve. Only time will tell. We'll know probably in six to eight weeks who's right. The best advice we get suggests it would have been far better for the government weeks ago to step back and incorporate their advice. Certainly that's what I've been getting from municipalities across the province, that we are rushing to approve something that is not workable. If

we want to disregard that advice, then we live with those consequences.

You wonder why our caucus abstained from it. It's because we are amending a bill that, according to those four groups, needs some substantial revisions. As I said, that should have been done and it hasn't been done.

Mr Baird: Maybe just a final comment. I certainly appreciate the comments of both our colleagues from Dovercourt and Scarborough-Agincourt.

I do have one concern with respect to some of the submissions that the member for Scarborough-Agincourt discussed. I have here a joint presentation that was sent to the government by, among others, AMO, the Municipal Finance Officers' Association and the Association of Municipal Clerks and Treasurers of Ontario, and I take issue with one of them. Right in the table of contents, it says what Bill 79 does: "Bill 79 imposes mandatory, inflexible and blunt solutions to manageable problems."

I want to say very bluntly I don't think these problems were manageable for a lot of small businesses in this province, whether it's that small business owner who rents a space at the Richmond Mall in my part of the province or whether they be in York region, in Northumberland county or where have you. Municipalities were given a number of tools and I want to acknowledge that some, the city of Toronto, used the tools. Others — we've discussed the case of Halton or Ottawa-Carleton or Wellington county — made an earnest effort and used a good number of them. But to say a "manageable problem" when a majority of municipalities used none of the tools, it would be dishonest of me not to say I had a problem with that because I do, because it wasn't a manageable problem for those small businesses.

Are we inflexible about ensuring that our small businesses are protected? You bet your boots we are.

The Vice-Chair: Further discussion? There being none, I'll put the question. Shall section 50, the short title of the bill, carry? All in favour? Opposed? Carried.

Long title. Any discussion? There being none, I'll put the question. Shall the long title of the bill carry? All in favour? Opposed? Carried.

Shall Bill 79, as amended, carry? All in favour? Opposed? Carried.

Shall Bill 79 be reported to the House? All in favour? Opposed? Carried.

The committee adjourned at 1605.



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